

# House Daily Reader

**Thursday, February 18, 1999**

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# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

744C0447

## HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB1138** - 2/17/99

Introduced by: Representatives Diedrich (Larry), Brooks, Brown (Richard), Cerny, Chicoine, Crisp, Duniphan, Fischer-Clemens, Garnos, Klaudt, Kooistra, Lucas, McIntyre, McNenny, Michels, Monroe, Peterson, Richter, Sebert, Slaughter, Smidt, Solum, Wetz, and Wilson and Senators Rounds, Albers, Brown (Arnold), Everist, Flowers, Hutmacher, Moore, Munson (David), and Olson

1 FOR AN ACT ENTITLED, An Act to account for how taxes are paid by certain manufactured  
2 homes for certain school purposes, to establish how the Department of Revenue shall adjust  
3 the computation for local effort, and to classify certain manufactured homes as real property  
4 for property tax purposes.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. That chapter 13-13 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The Department of Revenue shall exclude the real property valuation of manufactured  
9 homes, considered as real estate pursuant to § 10-4-2.4, and manufactured homes, converted to  
10 real estate after July 1, 1999, when computing local effort pursuant to §§ 13-13-10.1 and 13-37-  
11 35 for the purpose of the state aid to education formula. The county auditor shall also exclude  
12 such real estate value when computing the tax levy for the purpose of the school general fund  
13 and special education fund. However, such manufactured homes shall continue to be subject to  
14 each tax levy.

1       Section 2. That § 10-4-2.4 be amended to read as follows:

2       10-4-2.4. Real property, for the purposes of ad valorem taxation, includes manufactured  
3 homes as defined in subdivision 32-3-1(6) with a model year of ~~1997~~ 1994 or newer. This section  
4 does not apply to any manufactured home in the inventory of any dealer as defined in subdivision  
5 32-7A-1(1).

6       Section 3. That § 10-4-2.6 be amended to read as follows:

7       10-4-2.6. If a manufactured home with a model year of ~~1997~~ 1994 or newer, is sold by a  
8 licensed manufactured home dealer, the dealer shall complete the manufactured home listing  
9 form, as prescribed by the secretary of revenue, and send the completed form to the director of  
10 equalization of the county in which the manufactured home was delivered. The form shall be sent  
11 within thirty days after the delivery of the manufactured home.

12       Section 4. That § 10-4-2.4 be amended to read as follows:

13       10-4-2.4. Real property, for the purposes of ad valorem taxation, includes manufactured  
14 homes as defined in subdivision 32-3-1(6) with a model year of ~~1997~~ 1990 or newer. This section  
15 does not apply to any manufactured home in the inventory of any dealer as defined in subdivision  
16 32-7A-1(1).

17       Section 5. That § 10-4-2.6 be amended to read as follows:

18       10-4-2.6. If a manufactured home with a model year of ~~1997~~ 1990 or newer, is sold by a  
19 licensed manufactured home dealer, the dealer shall complete the manufactured home listing  
20 form, as prescribed by the secretary of revenue, and send the completed form to the director of  
21 equalization of the county in which the manufactured home was delivered. The form shall be sent  
22 within thirty days after the delivery of the manufactured home.

23       Section 6. The effective date of sections 4 and 5 of this Act is July 1, 2000.

24       Section 7. That § 10-4-2.4 be amended to read as follows:

25       10-4-2.4. Real property, for the purposes of ad valorem taxation, includes manufactured

1 homes as defined in subdivision 32-3-1(6) with a model year of ~~1997~~ 1985 or newer. This section  
2 does not apply to any manufactured home in the inventory of any dealer as defined in subdivision  
3 32-7A-1(1).

4 Section 8. That § 10-4-2.6 be amended to read as follows:

5 10-4-2.6. If a manufactured home with a model year of ~~1997~~ 1985 or newer, is sold by a  
6 licensed manufactured home dealer, the dealer shall complete the manufactured home listing  
7 form, as prescribed by the secretary of revenue, and send the completed form to the director of  
8 equalization of the county in which the manufactured home was delivered. The form shall be sent  
9 within thirty days after the delivery of the manufactured home.

10 Section 9. The effective date of sections 7 and 8 of this Act is July 1, 2001.

11 Section 10. That § 10-4-2.4 be amended to read as follows:

12 10-4-2.4. Real property, for the purposes of ad valorem taxation, includes manufactured  
13 homes as defined in subdivision 32-3-1(6) with a model year of ~~1997~~ 1977 or newer. This section  
14 does not apply to any manufactured home in the inventory of any dealer as defined in subdivision  
15 32-7A-1(1).

16 Section 11. That § 10-4-2.6 be amended to read as follows:

17 10-4-2.6. If a manufactured home with a model year of ~~1997~~ 1977 or newer, is sold by a  
18 licensed manufactured home dealer, the dealer shall complete the manufactured home listing  
19 form, as prescribed by the secretary of revenue, and send the completed form to the director of  
20 equalization of the county in which the manufactured home was delivered. The form shall be sent  
21 within thirty days after the delivery of the manufactured home.

22 Section 12. The effective date of sections 10 and 11 of this Act is July 1, 2002.

1    **BILL HISTORY**

2    1/25/99 First read in House and referred to Taxation. H.J. 172

3    2/2/99 Scheduled for Committee hearing on this date.

4    2/4/99 Scheduled for Committee hearing on this date.

5    2/9/99 Scheduled for Committee hearing on this date.

6    2/11/99 Scheduled for Committee hearing on this date.

7    2/16/99 Scheduled for Committee hearing on this date.

8    2/16/99 Taxation Do Pass Amended, Passed, AYES 11, NAYS 2. H.J. 525

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

813C0601

## HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO.

# HB1215 - 2/17/99

Introduced by: Representatives Crisp and Kazmerzak and Senators Symens, Flowers, and Lange

1 FOR AN ACT ENTITLED, An Act to provide for the continuation at the state level of certain  
2 federal commodity checkoff programs and to allow certain state checkoff programs to  
3 temporarily suspend the collection of checkoff assessments.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. If the operations of the federal beef research and promotion program, established  
6 pursuant to 7 CFR, Part 1260, or the federal pork promotion, research, and consumer  
7 information program established pursuant to 7 CFR, Part 1230, are terminated or suspended as  
8 a result of a referendum of producers of such commodities or products, a corresponding state  
9 promotion and development council for the affected or product commodity is hereby established.  
10 The secretary of the Department of Agriculture shall designate the name of the council and shall  
11 initiate procedures for the selection of the council's initial directors as provided in this Act.

12 Section 2. Terms used in sections 1 to 23, inclusive, of this Act mean:

13 (1) "Council," the promotion and development council established pursuant to section  
14 1 of this Act;

15 (2) "Designated commodity," the commodity to be subject to the promotion and

1 development program pursuant to section 1 of this Act;

2 (3) "Grower or producer," any person who plants, raises, harvests, or produces a  
3 designated commodity;

4 (4) "Participating grower or producer," a grower or producer who has not requested a  
5 refund from the payment of assessments on designated commodity production under  
6 this Act for a particular year, and any person who owns or operates an agricultural  
7 producing or growing facility for a designated commodity and shares in the profits  
8 and risks of loss from such operation, and who produces a designated commodity in  
9 South Dakota during the current or preceding marketing year;

10 (5) "Secretary," the secretary of the South Dakota Department of Agriculture.

11 Section 3. Any council established pursuant to this Act shall be composed of an odd number  
12 of directors, which shall be at least nine but not greater than fifteen directors who shall be  
13 participating growers or producers. The secretary shall designate the number of directors for the  
14 council and shall designate the boundaries of the districts to be represented by each such director.  
15 The directors shall be elected by participating growers or producers so that one director is  
16 elected from each district. The secretary is an ex officio, nonvoting director of any such council.

17 Section 4. The initial directors shall be elected by the participating growers or producers  
18 from each district pursuant to procedures established by this Act.

19 Section 5. An election shall be held in each district in which a director's term is to expire. The  
20 election date and time shall be determined by the council but shall be between January first to  
21 February fifteenth, inclusive, closest to the pending vacancy's expiration date. The election shall  
22 be by official ballot, which shall be made available at the polling location. The council shall  
23 designate at least one polling location in each county within the district. The principal polling  
24 location in the county shall be at the county office of the Cooperative Extension Service of South  
25 Dakota State University, if available, or at a place specified by the council. If only one candidate

1 is nominated in a district, no election is required in the district, and the council shall declare the  
2 nominee as elected and shall provide the nominee with a certificate of election.

3 Section 6. If voting at the designated time and place would cause a hardship on any eligible  
4 voter, the council shall allow for absentee voting on forms, and in a manner, prescribed in rule  
5 by the council. Absentee ballots shall be returned either to the council office no later than five  
6 calendar days before the day of the election or to the polling location before the close of the  
7 polls. The council shall ensure that any absentee ballot it has received within the deadline  
8 specified in this section is delivered to the appropriate polling place before the close of the polls.  
9 No absentee ballot that is received at the polling place after the close of the polls may be counted  
10 in the election results.

11 Section 7. To be eligible to vote in a district election, a participating grower or producer shall  
12 sign a participating grower or producer affidavit at the time of voting. A husband and wife, a  
13 landlord and tenant, and a landowner and purchaser under a contract for deed which is of record  
14 in the office of the register of deeds in the county where the real property is situated are each  
15 entitled to vote for director, if they meet the requirements of section 2 of this Act. No individual,  
16 landlord, tenant, partnership, limited liability company, corporation, cooperative, association or  
17 fiduciary may cast more than one vote per election even if operations are carried on in more than  
18 one council district. A participating grower or producer may vote only in the council district in  
19 which the participating grower or producer resides. A partnership, limited liability company,  
20 corporation, cooperative or association resides in the council district where its principal place  
21 of business is located. A partnership, limited liability company, corporation, cooperative or  
22 association shall attach a written authorization to the participating grower or producer affidavit  
23 which indicates that the person casting the vote has been authorized to do so.

24 Section 8. For the initial council, the secretary shall nominate two candidates for each  
25 position as director. Additional candidates may be nominated by written petition of fifty growers.



1 Procedures governing the time and place of filing petitions shall be established and publicized by  
2 the secretary. Any candidate shall be a resident grower or producer of the district from which  
3 the candidate is nominated. Upon the termination or suspension of a federal program as provided  
4 in section 1 of this Act, the secretary shall publish at least once, in at least one newspaper of  
5 general circulation in each council district, a notice stating that the council has been established,  
6 that nomination petitions for director candidates may be filed and the filing deadline for  
7 nominating petitions, and that an election to select directors for the council will be held on a  
8 specified date. The notice shall be published at least twenty-one days, but no more than forty  
9 days, before the deadline for filing nominating petitions. The notice shall specify how nominating  
10 petition forms may be obtained, the time and place for filing nominating petitions and the time  
11 and place of the election. The secretary shall receive the nominations and shall call an election  
12 for initial directors of the council within ninety days of the formation of a council pursuant to this  
13 Act.

14 Section 9. Notice of the election for the initial directors of the council shall be given by the  
15 secretary by publication in a newspaper of general circulation in each district at least five days  
16 before the date of the election and in any other reasonable manner as may be determined by the  
17 secretary. The notice shall set forth the period of time for voting, voting places, and such other  
18 information as the secretary may deem necessary.

19 Section 10. Notice of subsequent elections for directors of the council in a district shall be  
20 given by the council by publication in a newspaper of general circulation in the district and in any  
21 other reasonable manner as may be determined by the council. More than one notice may be  
22 published, but at least one notice shall be published at least seven days, but no more than  
23 twenty-one days before the election. Any notice shall set forth the period of time for voting,  
24 voting places, provision for absentee balloting and such other information as the council deems  
25 necessary.

1       Section 11. The council shall publish at least once, in at least one newspaper of general  
2       circulation in each council district in which a director is to be elected, a notice of the pending  
3       expiration of the director's term. The notice shall be published at least twenty-one days, but no  
4       more than forty days, before the deadline for filing nominating petitions. The notice shall specify  
5       how nominating petition forms may be obtained, the time and place for filing nominating  
6       petitions and the time and place of the election.

7       Section 12. In any election held pursuant to this Act, the candidate receiving the highest  
8       number of votes in the district is elected. Director terms are for three years and no director of  
9       the council may serve for more than two complete consecutive terms. The terms of office for the  
10      initial directors are determined by lot. One-third of the initial directors shall serve for one year,  
11      one-third of the initial directors shall serve for two years, and one-third of the initial directors  
12      shall serve for three years. Directors shall take office on March first of the year of the election.

13      Section 13. After election of the initial directors, the council shall administer subsequent  
14      elections for directors of the council with the assistance of the secretary. The council shall  
15      appoint in each county of the district a committee of three persons to serve as election judges.  
16      If the council is unable to appoint a full committee of election judges, the secretary shall appoint  
17      the judges. One of the election judges shall be the South Dakota State University Cooperative  
18      Extension Service agent, or acting agent, for the county, if available. The election judges are  
19      responsible for ballot security and count and shall deliver the ballots, the election results, and a  
20      completed certification of election form to the council office or a designated representative. The  
21      election judges are also responsible for certifying that all who vote are eligible voters. The  
22      council shall canvass the results of the election within fifteen days after certification and shall  
23      declare elected the person receiving the highest number of votes for each office. The council shall  
24      provide a certificate of election to each person declared elected.

25      Section 14. If a director of the council ceases to be a participating grower or producer, dies,

1 or resigns from office before the expiration of the term, the council shall appoint, subject to  
2 approval by the secretary, a participating grower or producer from the district for the balance  
3 of the unexpired term.

4 Section 15. The council shall annually elect a president and such other officers as are  
5 necessary to administer the council. A majority of voting directors constitutes a quorum. All  
6 meetings of the council shall be called by the president. However, special meetings may be called  
7 by five directors of the council. The council shall adopt procedures for the calling of special  
8 meetings.

9 Section 16. Moneys collected from checkoff fees shall be deposited in a special revolving  
10 fund created in the state treasury and are continuously appropriated to the council. Expenditures  
11 of these funds shall be made in accordance with the provisions of Title 4.

12 Section 17. The council may:

- 13 (1) Contract and cooperate with any person, organization or with any governmental  
14 department or agency for market maintenance and expansion, research, education,  
15 transportation and for the prevention, modification or elimination of trade barriers  
16 which obstruct the free flow of the commodity and products made from the  
17 commodity to market;
- 18 (2) Expend the funds collected pursuant to this chapter and appropriated for its  
19 administration;
- 20 (3) Appoint, discharge, fix compensation for and prescribe the duties of such personnel  
21 as it deems necessary;
- 22 (4) Accept donations of funds, property, services or other assistance from public or  
23 private sources for the purpose of furthering the objectives of the council.

24 Section 18. The secretary shall promulgate rules pursuant to chapter 1-26 concerning:

- 25 (1) The procedures for obtaining a declaratory ruling;

- 1       (2)    The procedures for the payment and collection of assessments for the designated
- 2            commodity or product in accordance with the requirements of section 20 of this Act;
- 3       (3)    The procedures for obtaining a refund of the assessment;
- 4       (4)    The procedures for collecting delinquent assessments and assessing penalties;
- 5       (5)    The record keeping and reporting requirements of first purchasers; and
- 6       (6)    Procedures, forms, public notices and other requirements for nominating director
- 7            candidates and for conducting and certifying elections.

8       Section 19. A refundable assessment at one-half the assessment rate that was in effect for the

9       corresponding national promotion and development council at the time of its termination or

10      suspension is imposed by the council upon the designated commodity marketed to a first

11      purchaser within the state. The assessment is due upon any identifiable lot or quantity of the

12      designated commodity. No assessment may be made until rules promulgated pursuant to section

13      18 of this Act are in effect.

14      Section 20. The assessment imposed by this Act on pork or on beef shall be collected using

15      payment requirements and collection procedures that are substantially similar to the payment

16      requirements and collection procedures established for pork in 7 CFR, Part 1230 and for beef

17      in 7 CFR, Part 1260, respectively.

18      Section 21. If a first purchaser fails to remit the assessment provided under this Act, the

19      council may enforce collection in any appropriate court within this state.

20      Section 22. Any grower or producer subject to the assessment provided in this Act may,

21      within sixty days following such assessment, make application to the council for a refund of the

22      assessment. Upon the return of the refund application, accompanied by a record of the

23      assessment by the first purchaser, the grower or producer shall, within sixty days, be refunded

24      the net amount of the assessment collected. However, a grower or producer who has paid the

25      assessment more than once on the same designated commodity is entitled to a refund of the

1 overpayment.

2 Section 23. The council shall develop and disseminate information and instructions relating  
3 to the purpose of the assessment and the manner in which refunds may be claimed, and to this  
4 extent shall cooperate with governmental agencies, state and federal, and private businesses  
5 engaged in the purchase of the designated commodity.

6 Section 24. That chapter 38-10 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The commission may temporarily reduce or suspend the levy and collection of the  
9 promotional fee established pursuant to § 38-10-22 for a period specified by the commission, not  
10 to exceed one year. At the end of the period, the levy and collection of the fee shall resume. The  
11 number of times that the commission may reduce or suspend the levy and collection of the fee  
12 is not limited.

13 Section 25. That chapter 38-27 be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 The council may temporarily reduce or suspend the levy and collection of the assessment  
16 established pursuant to § 38-27-11 for a period specified by the council, not to exceed one year.  
17 At the end of the period, the levy and collection of the assessment shall resume. The number of  
18 times that the council may reduce or suspend the levy and collection of the assessment is not  
19 limited.

20 Section 26. That chapter 38-29 be amended by adding thereto a NEW SECTION to read as  
21 follows:

22 The council may temporarily reduce or suspend the levy and collection of the assessment  
23 established pursuant to § 38-29-8 for a period specified by the council, not to exceed one year.  
24 At the end of the period, the levy and collection of the assessment shall resume. The number of  
25 times that the council may reduce or suspend the levy and collection of the assessment is not

1 limited. If the operations of the federal soybean promotion and research program established  
2 pursuant to 7 CFR, Part 1220, are terminated or suspended as a result of a referendum of  
3 producers, the rate of the assessment established pursuant to § 38-29-8 shall be reduced by one-  
4 half until the operations of the federal program resume.

5 Section 27. That chapter 38-32 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 The council may temporarily reduce or suspend the levy and collection of the assessment  
8 established pursuant to § 38-32-15 for a period specified by the council, not to exceed one year.  
9 At the end of the period, the levy and collection of the assessment shall resume. The number of  
10 times that the council may reduce or suspend the levy and collection of the assessment is not  
11 limited.

12 Section 28. That chapter 40-31 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 The association may temporarily reduce or suspend the levy and collection of the assessment  
15 established pursuant to § 40-31-9 for a period specified by the association, not to exceed one  
16 year. At the end of the period, the levy and collection of the assessment shall resume. The  
17 number of times that the association may reduce or suspend the levy and collection of the  
18 assessment is not limited. If the operations of the federal dairy promotion program established  
19 pursuant to 7 CFR, Part 1150, are terminated or suspended as a result of a referendum of  
20 producers, collection of the assessment established pursuant to § 41-31-9 shall continue as  
21 provided in § 41-31-9.

1    **BILL HISTORY**

2    1/27/99 First read in House and referred to committee assignment waived. H.J. 215

3    1/28/99 Referred to Agriculture and Natural Resources. H.J. 240

4    2/4/99 Scheduled for Committee hearing on this date.

5    2/9/99 Scheduled for Committee hearing on this date.

6    2/9/99 Scheduled for Committee hearing on this date.

7    2/16/99 Scheduled for Committee hearing on this date.

8    2/16/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 0.

9    H.J. 533

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

329C0815

## HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **HB1273** - 2/17/99

Introduced by: Representatives Crisp and Koskan and Senator Frederick

1 FOR AN ACT ENTITLED, An Act to revise certain provisions and an inspection fee regarding  
2 moisture-measuring devices and protein-measuring devices.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 38-31-1 be amended to read as follows:

5 38-31-1. Terms used in this chapter, ~~unless the context otherwise requires,~~ mean:

6 (1) "Agricultural commodity," any grain or seed which is ordinarily tested for moisture  
7 content when offered for sale, processing, or storage;

8 (2) "Department," the Department of Agriculture;

9 (3) "Moisture-measuring devices," any ~~electronic~~ device or instrument used in  
10 ascertaining the moisture content of agricultural commodities;

11 (4) "Protein-measuring devices," any ~~electronic~~ device or instrument used in ascertaining  
12 the protein content of agricultural commodities;

13 (5) "Secretary" the secretary of the Department of Agriculture.

14 Section 2. That § 38-31-2 be amended to read as follows:

15 38-31-2. The department may upon the written request of any elevator or upon the written  
16 complaint and request of any individual selling agricultural commodities, inspect any



1 moisture-measuring device or protein-measuring device used in commerce in this state, except  
2 those belonging to the United States. The department may inspect at the convenience of the  
3 department any moisture-measuring or protein-measuring device.

4 Section 3. That § 38-31-3 be amended to read as follows:

5 38-31-3. If an inspection or comparative test reveals that the moisture-measuring device or  
6 protein-measuring device being inspected or tested conforms to the standards and specifications  
7 established by the department, the ~~department device~~ shall ~~mark it~~ be marked with an appropriate  
8 seal. Any moisture-measuring device or protein-measuring device which upon inspection is found  
9 not to conform with the specifications and standards established by the department shall be  
10 marked with an appropriate seal showing the device to be defective, which seal may not be  
11 altered or removed until the device is properly repaired and reinspected. The owner or user of  
12 ~~such the defective~~ device shall be notified in writing on the date of the inspection of ~~such the~~  
13 defective condition ~~by the department~~ on an inspection form prepared by the ~~department~~  
14 inspector.

15 Section 4. That § 38-31-5 be amended to read as follows:

16 38-31-5. A fee not to exceed ~~twenty-five~~ one hundred dollars may be charged for each device  
17 subject to inspection under the provisions of this chapter and rules promulgated thereunder. The  
18 inspection fee for an inspection requested pursuant to § 38-31-2 shall be paid by the person  
19 requesting the inspection. The department shall establish the amount of the fee by rule  
20 promulgated in accordance with chapter 1-26.

21 Section 5. Fees collected pursuant to § 38-31-5 shall be remitted at the end of each month  
22 to the state treasurer and deposited in the moisture and protein tester fund, which is hereby  
23 created. Expenditures from the fund shall be appropriated through the normal appropriation  
24 process. Unexpended funds and interest shall remain in the fund until appropriated by the  
25 Legislature.

1    **BILL HISTORY**

2    2/1/99 First read in House and referred to Agriculture and Natural Resources. H.J. 282

3    2/16/99 Scheduled for Committee hearing on this date.

4    2/16/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 12, NAYS 1.

5    H.J. 536

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

617C0817

## HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1283** - 2/17/99

Introduced by: Representatives Michels and Peterson and Senator Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the licensing and  
2 regulation of the practices of architecture, engineering, land surveying, photogrammetry,  
3 landscape architecture, petroleum release assessment, and petroleum release remediation and  
4 to the certification of environmental technical services.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. Terms used in this Act mean:

- 7 (1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation,  
8 or reconstruction to a building which changes the use, occupancy classification, or  
9 occupant load, or the exiting, structural, mechanical, or electrical systems of a  
10 building as defined by the building code;
- 11 (2) "Architect," any person licensed in good standing and legally authorized to practice  
12 architecture in this state;
- 13 (3) "Architectural intern," any person who has successfully completed an accredited  
14 education program in architecture acceptable to the board and is enrolled in the intern  
15 development program administered by the National Council of Architectural  
16 Registration Boards;

- 1       (4)    "Board," the Board of Technical Professions;
- 2       (5)    "Building," any structure used or intended to support or shelter any occupancy;
- 3       (6)    "Building or floor area," the sum of the areas of all of the floors of a building,  
4           including basements, mezzanine, and intermediate tiers, and penthouses of headroom  
5           height, measured from the exterior faces of exterior walls or from the center line of  
6           the wall separating buildings. The building area does not include such features as pipe  
7           trenches, exterior terraces or steps, chimneys, vent shafts, courts, and roof overhangs.  
8           The floor area of enlargements shall be added to the existing building area. A fire or  
9           area separation wall is not an exterior wall for the purposes of this definition;
- 10      (7)    "Building official," the officer or other designated authority charged with the  
11           administration and enforcement of the adopted code;
- 12      (8)    "Business entity," any corporation, partnership, limited liability corporation, limited  
13           liability partnership, or sole proprietorship that practices or offers to practice  
14           engineering, architecture, land surveying, landscape architecture, petroleum release  
15           assessment, or petroleum release remediation services to the public through its  
16           licensed personnel who are either employees, officers, directors, partners, members,  
17           managers, or owners and that have been issued a certificate of authorization by the  
18           board;
- 19      (9)    "Construction administration," the interpretation of drawings and specifications, the  
20           establishment of standards of acceptable workmanship, and the site observation of  
21           construction, by a licensed professional, for the purpose of determining whether the  
22           work is in general accordance with the construction contract documents. Shop  
23           drawing review and inspection of construction by contractors, subcontractors,  
24           owner's agents, building officials, or other unlicensed professionals does not  
25           constitute construction administration;

- 1       (10) "Corrective action," an action taken to minimize, contain, eliminate, remediate,  
2             mitigate, or clean up a petroleum release, excluding removal of a petroleum tank of  
3             less than one thousand one hundred gallons;
- 4       (11) "Design-build," a delivery approach in which a project team of design professionals  
5             and builders perform design and construction services under contract with a client;
- 6       (12) "Engineer," a person who is qualified to practice engineering by reason of special  
7             knowledge and use of the mathematical, physical, and engineering sciences and the  
8             principles and methods of engineering analysis and design, acquired by engineering  
9             education and engineering experience;
- 10      (13) "Engineering intern" or "engineer-in-training" or "EIT" or "EI," a person enrolled by  
11             the board as an engineering intern and who has successfully passed the fundamentals  
12             of engineering examination;
- 13      (14) "Enlargement," for the purpose of determining exemptions, is any addition to a  
14             building which changes the use, occupancy classification, or occupant load, or the  
15             existing, structural, mechanical, or electrical systems of a building as defined by the  
16             building code adopted by the board;
- 17      (15) "Land surveyor," a person licensed in good standing and legally authorized to practice  
18             land surveying in this state;
- 19      (16) "Land surveying intern" or "land surveyor-in-training" or "LSIT" or "LSI," a person  
20             enrolled by the board as a land surveying intern who has successfully passed the  
21             fundamentals of land surveying examination;
- 22      (17) "Landscape architect," a person licensed in good standing and legally authorized to  
23             practice landscape architecture in this state;
- 24      (18) "Landscape architectural intern," a person who has successfully completed an  
25             accredited education program in landscape architecture adopted by the board;

- 1       (19) "License," a certificate indicating authority to practice and use titles within a  
2           profession;
- 3       (20) "Licensee," a person or business entity whose license is in good standing;
- 4       (21) "Petroleum," gasoline, alcohol-blended fuels, diesel fuels, aviation gasoline, jet fuel,  
5           fuel oil, kerosene, burner oil, naphtha, lubricating oils, motor oil, automatic  
6           transmission fluid, waste oil, or alcohols that have been denatured with gasoline and  
7           stored to be used as blended fuel-grade ethanol;
- 8       (22) "Petroleum release assessor," a person licensed in good standing and legally  
9           authorized to practice petroleum release assessment in this state;
- 10      (23) "Petroleum release remediator," a person licensed in good standing and legally  
11          authorized to practice petroleum release remediation in this state;
- 12      (24) "Professional engineer," a person licensed in good standing and legally authorized to  
13          practice engineering in this state;
- 14      (25) "Release," the spilling, leaking, emitting, discharging, escaping, leaching, or disposing  
15          of a reportable quantity of petroleum;
- 16      (26) "Remedial investigation," an action to identify the corrective action to be taken to  
17          protect the public health, safety, and environment and to contain a release of  
18          petroleum into the environment;
- 19      (27) "Responsible charge," the immediate and responsible direction by a licensed  
20          professional who has exercised personal direction, guidance, and control over the  
21          design, preparation of documents, construction administration, and other professional  
22          services and has exercised professional judgment in all matters relating to those  
23          services;
- 24      (28) "Retired licensee," a person who is retired and is no longer licensed to practice that  
25          person's profession may use the appropriate honorific title or combination of titles of

Architect, Retired; Professional Engineer, Retired; Land Surveyor, Retired; or  
Landscape Architect, Retired;

(29) "Site assessment," an action to identify the existence, source, nature, and extent of a  
release and the extent of any danger to public health, safety, and welfare of the public  
or environment;

(30) "Site observation," the visual observation of a construction project for general  
compliance with submitted plans and specifications at significant stages and at project  
completion.

Section 2. For the purposes of this Act, the term, practice of architecture, means the practice  
or offering to practice any service in connection with the design, evaluation, construction,  
enlargement, or alteration of a building or group of buildings and the space within and  
surrounding such buildings, which have as their principal purpose human occupancy or  
habitation. Such service includes consultation; evaluation; expert technical testimony; planning;  
providing preliminary studies; designs; overall interior and exterior building design; preparation  
of drawings, specifications, and related documents and other technical submissions; construction  
administration services which include the review or observation of construction for the purpose  
of determining whether the work is in general accordance with the design, drawings,  
specifications, codes, and other technical submissions; and coordination of services furnished  
by the architect, licensed professional engineers, and other consultants as they relate to  
architectural work in connection with the design and construction of any private or public  
building, building project, or integral part or parts of buildings, or any addition or alteration  
thereto. The term also includes representation of clients in connection with the construction  
administration services entered into between clients and contractor and others.

Section 3. For the purposes of this Act, the term, practice of engineering, means the practice  
or offering to practice of any service or creative work, the adequate performance of which

1 requires engineering education, training, and experience in the application of special knowledge  
2 of the mathematical, physical, and engineering sciences to such services or creative work. Such  
3 service or work includes consultation; investigation; expert technical testimony; evaluation;  
4 planning; design; and design coordination of engineering works and systems; planning the use  
5 of land and water; land-use studies; teaching of advanced engineering subjects; performing  
6 engineering studies; and the review or observation of construction for the purpose to determine  
7 whether the work is in general accordance with drawings, specifications, and other technical  
8 submissions. Any such service or work, either public or private, may be in connection with any  
9 utilities, structures, buildings, machines, equipment, processes, work systems, projects, and  
10 industrial or consumer products, or equipment of a mechanical, electrical, hydraulic, pneumatic,  
11 or thermal nature, insofar as they involve safeguarding life, health, or property, and including  
12 such other professional services as are necessary to the planning, progress, and completion of  
13 any engineering services.

14 For the purposes of this section, the term, design coordination, includes the review and  
15 coordination of those technical submissions prepared by others, including consulting engineers,  
16 architects, landscape architects, land surveyors, and other professionals working under the  
17 direction of the engineer. The term, engineering studies, includes all activities required to support  
18 the sound conception, planning, design, construction, maintenance, and operation of engineered  
19 projects, but excludes the surveying of real property for the establishment of land boundaries,  
20 rights-of-way, easement exhibits relating to land boundaries, and the dependent or independent  
21 surveys or resurveys of the public land survey system.

22 A person is construed to practice or offer to practice engineering if the person practices any  
23 branch of the profession of engineering, if the person, by verbal claim, sign, advertisement,  
24 letterhead, card, or in any other way represents himself or herself to be a professional engineer,  
25 or if the person through the use of some other title implies that the person is a professional



1 engineer or that the person is licensed under these provisions, or if the person holds himself or  
2 herself out as able to perform or does perform any engineering service or work or any other  
3 service designated by the practitioner which is recognized as engineering.

4 Section 4. For the purposes of this Act, the term, practice of land surveying, means the  
5 practice or offering to practice professional services such as consultation, investigation,  
6 testimony evaluation, expert technical testimony, land-use studies, planning, mapping,  
7 assembling, interpreting reliable scientific measurements and information relative to the location,  
8 size, shape, or physical features of the earth, improvements on the earth, the space above the  
9 earth, or any part of the earth, and utilization and development of these facts and interpretation  
10 into an orderly survey map, plan, report, description, or project.

11 The practice of land surveying includes any of the following:

- 12 (1) Locates, relocates, establishes, reestablishes, lays out, or retraces any property line or  
13 boundary of any tract of land or any road, right-of-way, easement, alignment, or  
14 elevation of any of the fixed works embraced within the practice of land surveying;
- 15 (2) Makes any survey for the subdivision of any tract of land;
- 16 (3) Determines, by the use of principles of land surveying, the position for any survey  
17 monument or reference point; or sets, resets, or replaces any such monument or  
18 reference point;
- 19 (4) Determines the configuration or contour of the earth's surface or the position of fixed  
20 objects on the earth's surface by measuring lines and angles and applying the principles  
21 of mathematics or photogrammetry;
- 22 (5) Geodetic surveying which includes surveying for determination of the size and shape  
23 of the earth utilizing angular and linear measurements through spatially oriented  
24 spherical geometry;
- 25 (6) Creates, prepares, or modifies electronic or computerized data, including land

1 formation systems and geographic information systems, relative to the performance  
2 of the activities in subdivisions (1) to (5), inclusive, of this section.

3 Section 5. For the purposes of this Act, the term, practice of landscape architecture, means  
4 the practice or offering to practice landscape architecture projects, including preparing  
5 preliminary studies, providing land-use studies, developing design concepts, giving expert  
6 technical testimony, planning for the relationships of physical improvements and intended uses  
7 of the site, establishing form and aesthetic elements, analyzing and providing for life safety  
8 requirements, developing those construction details on the site which are exclusive of any  
9 building or structure and do not require the seal of an engineer or architect, preparing and  
10 coordinating technical submissions, and conducting site observation of landscape architecture  
11 projects.

12 Landscape architecture, for the purposes of landscape preservation, development, and  
13 enhancement, includes: investigation, selection, and allocation of land and water resources for  
14 appropriate use; feasibility studies; formulation of graphic and written criteria to govern the  
15 planning and design of land construction programs; preparation, review, and analysis of master  
16 plans for land use and development; production of overall site plans, landscape grading and  
17 landscape drainage plans, irrigation plans, planting plans, and construction details; specifications;  
18 cost estimates and reports for land development; collaboration in design of roads, bridges, and  
19 structures with respect to the functional and aesthetic requirements of the areas on which they  
20 are to be placed; negotiation and arrangement for execution of land area projects; field  
21 observation and inspection of land area construction, restoration, and maintenance.

22 Section 6. For the purposes of this Act, the term, practice of petroleum release assessment,  
23 means the practice of directing or supervising the field crew performing activities related to  
24 assessments and environmental monitoring; developing assessment plans; directing the placement  
25 of soil borings and determining where to collect samples for analytical data; determining the

1 location of representative soil samples for contaminant analysis; identifying and classifying soil  
2 types and soil conditions; preparing soil boring logs or supervising preparation of logs; testing  
3 and reporting on the physical and chemical properties of soils; identifying and reporting on  
4 geological conditions; developing and implementing groundwater evaluation activities; directing  
5 the placement of monitoring or observation wells; evaluating aquifer characteristics; formulating  
6 input data for groundwater flow models; operating groundwater models and interpreting results;  
7 directing the performance of pump tests or dye tests and other aquifer tests; interpreting the  
8 results of aquifer testing; determining capture zones for groundwater removal systems;  
9 evaluating and reporting on physical and chemical groundwater data; or offering to provide any  
10 services pursuant to this section.

11 Section 7. For the purposes of this Act, the term, practice of petroleum release remediation,  
12 means the practice of interpreting assessment results; formulating input data for contaminant  
13 models; operating contaminant models and interpreting results; identifying the potential fate of  
14 contaminants and environmental transport mechanisms; identifying the environmental risks and  
15 health hazards of contaminants and contaminated media; directing or supervising the disposal of  
16 contaminated soil and groundwater; evaluating and recommending remediation alternatives;  
17 preparing a cost estimate or cost-effective analysis for remedial alternatives; developing soil and  
18 groundwater remediation systems; preparing the plans and specifications for remedial systems;  
19 directing or supervising the installation, operation, and maintenance of remedial systems;  
20 overseeing and directing assessment and remedial activities; signing assessment plans, assessment  
21 reports, and remedial action plans; or offering to provide any of the services pursuant to this  
22 section. A petroleum release remediator may perform all the functions of a petroleum release  
23 assessor.

24 Section 8. Any person practicing or offering to practice architecture, engineering, land  
25 surveying, photogrammetry, landscape architecture, or petroleum release assessment or

1 remediation shall submit evidence of qualifications to the board and be licensed in accordance  
2 with the provisions of this Act. No person may practice or offer to practice any of these  
3 professions, or to use in connection with that person's name or otherwise assume, use, or  
4 advertise any title or description that may falsely convey the impression that the person is duly  
5 licensed under the provisions of this Act unless the person is so licensed.

6 Section 9. This chapter does not apply to:

- 7 (1) Any person engaged in military engineering while rendering service exclusively for any  
8 of the armed forces of the United States or this state;
- 9 (2) Any person engaged in the practice of professional engineer or architecture in the  
10 employ of the United States government but only while exclusively engaged as a  
11 United States government employee on such government project or projects which  
12 lie within federally-owned land;
- 13 (3) Any person engaged in the practice of professional engineering, architecture, or land  
14 surveying in the employ of the state and any of its political subdivisions but only while  
15 rendering service exclusively to such employer. Any building resulting from the  
16 practice of professional engineering, architecture, or land surveying under this  
17 subdivision is subject to the size limitation imposed under the exemptions in  
18 subdivision (8) of this section;
- 19 (4) Any employee who prepares technical submissions or administers construction  
20 contracts for a person or organization lawfully engaged in the practice of engineering,  
21 architecture, or land surveying, if the employee is under the direct supervision of a  
22 registered professional engineer, architect, or land surveyor;
- 23 (5) Any full-time employee of a corporation, partnership, firm, business entity, or public  
24 utility while exclusively doing work for the corporation, partnership, firm, business  
25 entity, or public utility, if the work performed is in connection with the property,

1 products, and services utilized by the employer and not for any corporation,  
2 partnership, firm, or business entity practicing or offering to practice architectural,  
3 engineering, or land surveying services to the public. The provisions of this  
4 subdivision do not apply to any building or structure if the primary use is occupancy  
5 by the public;

6 (6) Any person engaged in the preparation of plans and specifications for the erection,  
7 enlargement, or alteration of any of the following buildings:

8 (a) Any dwelling for a single family, and any outbuilding in connection therewith,  
9 such as a barn or private garage;

10 (b) Any two, three, or four family dwelling;

11 (c) Any five to sixteen family dwelling, inclusive, located in a governmental  
12 subdivision of this state which provides a detailed building code review of  
13 building projects by a building inspection department which is a Class A  
14 member of the International Conference of Building Officials;

15 (d) Any farm or ranch building or accessory thereto except any building regularly  
16 used for public purposes;

17 (e) Any temporary building or shed used exclusively for construction purposes, not  
18 exceeding two stories in height, and not used for living quarters;

19 (7) Any person who prepares detailed or shop plans required to be furnished by a  
20 contractor to a registered professional engineer or architect, and any construction  
21 superintendent supervising the execution of work designed by an architect or  
22 professional engineer registered in accordance with this Act;

23 (8) Any person engaged in the preparation of plans and specifications for the new  
24 construction, the enlargement or the alteration of any of the following buildings:

25 (a) Any building occupied as a hospital, hotel, motel, restaurant, library, medical

1 office, nursing facility, assisted living facility, jail, retirement home, or  
2 mortuary, if the gross square footage of the new construction, the enlargement,  
3 or the alteration is four thousand square feet or less;

4 (b) Any building occupied as an auditorium, church, school, or theater if the gross  
5 square footage of the new construction, the enlargement, or the alteration is  
6 five thousand square feet or less;

7 (c) Any building occupied as a bowling alley, office, shopping center, bank, fire  
8 station, service station, or store if the gross square footage of the new  
9 construction, the enlargement, or the alteration is seven thousand square feet  
10 of less;

11 (d) Any building occupied as an industrial plant or public garage if the gross square  
12 footage of the new construction, the enlargement, or the alteration is eleven  
13 thousand square feet or less;

14 (e) Any building occupied as a warehouse if the gross square footage of the new  
15 construction, the enlargement, or the alteration is twenty thousand square feet  
16 or less;

17 (f) Any building with an occupancy other than those listed in subsection (a) to (e),  
18 inclusive, of this subdivision if the gross square footage of the new  
19 construction, the enlargement, or the alteration is four thousand square feet of  
20 less;

21 (g) Any preengineered or predesigned building, or any preengineered or  
22 predesigned building with a predesigned system, designed for the intended use  
23 of that building, including building structure, electrical, plumbing, and  
24 mechanical systems, if the buildings and systems are supplied directly, or  
25 indirectly, by a company engaged in the business of designing and supply such

1 buildings and systems and if the company has in it employ one or more  
2 engineers or architects licensed in South Dakota, who prepare all designs for  
3 such buildings and systems.

4 No person exempted may use the title of professional engineer, architect, or land surveyor,  
5 or any other word, words, letters, or signs in connection with the person's name that may falsely  
6 convey the impression that the person is a licensed professional engineer, architect, or land  
7 surveyor.

8 Section 10. For the purposes of subdivision (8) of section 9 of this Act, if a building consists  
9 of more than one type of occupancy, each portion of the building shall conform to the limitations  
10 established by that subdivision for each type of occupancy. The area of the building shall be such  
11 that the sum of the ratios of the actual area for each separate occupancy divided by the total  
12 allowable area allowed by that subdivision for each separate occupancy does not exceed one.

13 Section 11. This Act does not prohibit a contractor from offering to provide or from  
14 providing design-build services if the architectural and engineering services offered or provided  
15 in connection with the design-build services are rendered by an architect or professional engineer  
16 licensed in accordance with this Act.

17 Section 12. This Act does not apply to providers of services such as drilling or monitoring  
18 well installation, analytical testing, monitoring, electrical, plumbing, excavation, or construction  
19 if the service provided is part of a site assessment, remedial investigation, or corrective action  
20 to remediate water or soil contaminated from a petroleum release performed or executed by an  
21 authorized petroleum release business entity with a certificate of authorization.

22 Section 13. An architect may engage in the practice of professional engineering, or a  
23 professional engineer may engage in the practice of architecture, but only to the extent that such  
24 practice is incidental or of minor importance to a project or service being legally performed under  
25 this Act.

1       Section 14. The Board of Technical Professions is hereby created to administer the  
2 provisions of this Act. Each member of the board shall receive a certificate of appointment from  
3 the Governor, each member and shall file with the secretary of state a written oath for the faithful  
4 discharge of the member's official duties. The board shall consist of seven members to be  
5 appointed by the Governor for a term of four years. In implementing the four-year terms, the  
6 Governor shall vary the terms to enable the board to have no more than two terms expire in any  
7 one year. The board shall be composed of two professional engineers, two architects, two land  
8 surveyors, and one member from the public. Members may be reappointed to succeed  
9 themselves. A member shall hold over the expiration of a term until a successor is duly appointed  
10 and qualified.

11       Section 15. Each member of the board shall be a citizen of the United States and a resident  
12 of this state. The public member may not be or have been engaged in any activity subject to  
13 licensure under this Act. The members may not all be of the same political party.

14       Section 16. The members of the board, or any committee of the board, and the executive  
15 director of the board are immune from liability in damages, and no cause of action for damages  
16 may arise against them for any act or proceeding undertaken or performed by them within their  
17 official capacity if they acted in good faith. These persons, while acting upon disciplinary matters  
18 and in carrying out civil remedies, are deemed to be acting as officers of the state. The attorney  
19 general shall represent and appear for them in any action or proceeding brought by or against  
20 them because of such acts.

21       Section 17. The Governor may remove any member of the board for misconduct, incapacity,  
22 or neglect of duty. Any member appointed to fill a vacancy arising from other than the natural  
23 expiration of a term shall serve for only the unexpired portion of the term.

24       Section 18. The board shall annually elect from its members a chair, a vice chair, and a  
25 secretary. The board shall hold at least six regular meetings in each year. Special meetings may



1 be called and notice of all meetings shall be given in such manner as the public meetings laws  
2 may provide. At all meetings, a majority of the board constitutes a quorum. The board and its  
3 employees may be included in the state blanket bond purchased pursuant to § 3-5-5.1.

4 Section 19. The executive director of the board shall receive and account for all money  
5 derived under the provisions of this Act. All money shall be used by the board to administer the  
6 duties set forth under this Act. The board may determine the manner of disbursing the money and  
7 purposes for which disbursements shall be made. Warrants for the payment of disbursements  
8 shall be issued by the state auditor and paid by the state treasurer upon presentation of itemized  
9 vouchers approved by the board. The total of the warrants may not exceed the total balance.

10 Section 20. The board may employ counsel and other necessary assistance to aid in the  
11 enforcement of this Act or for the assistance of any proceeding commenced by the attorney  
12 general or by a state's attorney, the compensation and expenses of whom shall be paid from the  
13 technical professions fund.

14 Section 21. The board shall employ an executive director who shall work under the direction  
15 of the board and shall be delegated the duties necessary to conduct board business. The board  
16 may employ staff and rent offices as necessary for the proper performance of its duties as  
17 prescribed in this Act. The compensation and expenses shall be paid from the technical  
18 professions fund.

19 Section 22. The board shall, pursuant to chapter 1-26, promulgate rules which may be  
20 reasonably necessary for the performance of its duties, the regulation of proceedings before it,  
21 and the licensure of the professions it regulates. The existing rules promulgated under the  
22 previous chapter 36-18 remain in effect until replaced. The board shall promulgate rules,  
23 pursuant to chapter 1-26, for the licensure of professional engineers, architects, land surveyors,  
24 photogrammetrists, landscape architects, and petroleum release assessors and remediators in the  
25 following areas:

- 1       (1)   Forms such as applications, renewals, licenses or certificates, receipts, and wallet  
2           cards for applicants, licensed professionals, and business entities;
- 3       (2)   Fees for applications, examinations, renewals, late penalties, lists and labels of  
4           licensees, returned checks, reinstatement, inactive status, ability to allow a vendor to  
5           collect fees for examinations, waiver of fees;
- 6       (3)   Criteria for types of education degrees, approval of accredited programs, intern  
7           programs, type of experience, length of experience, national and state specific  
8           examinations, use of computer examinations, criteria from other countries, procedure  
9           to evaluate foreign degrees, eligibility of applicants, dual licenses;
- 10      (4)   Continuing professional education and development content, hours, carryovers, and  
11          requirements;
- 12      (5)   How, when, and where to seal plans and documents; type of seal; required services  
13          to be provided; and criteria to define complete plans, minimum standards of practice,  
14          and guidelines;
- 15      (6)   Description of and criteria for construction administration, including a designation of  
16          who is to perform construction administration and criteria for a prime professional or  
17          a coordinating professional;
- 18      (7)   Requirements for compliance with local building code;
- 19      (8)   The adoption of a code of professional conduct;
- 20      (9)   Procedures for disciplinary proceedings; and
- 21      (10)  Procedures for contested cases pursuant to chapter 1-26.

22       Section 23. The Board of Technical Professions shall continue within the Department of  
23   Commerce and Regulation and shall retain all the prescribed functions, including administrative  
24   functions, of the previous State Commission of Engineering, Architectural and Land Surveying  
25   Examiners.

Section 24. The board shall maintain the following record and report policy:

- (1) A record of its proceedings and all current applications of licensure shall be retained;
- (2) The record of the board shall be prima facie evidence of the proceedings of the board, and a transcript thereof, duly certified by the executive director of the board, shall be admissible as evidence with the same force and effect as if the original were produced; and
- (3) The following are of a confidential nature and are not public records: examination scores, examination material, examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants and licensees, and investigation files if any investigation is still pending.

Section 25. Any applicant for enrollment as an engineering intern shall provide evidence satisfactory to the board that the applicant has graduated from or is admitted in an accredited engineering curriculum and has passed an examination. The examination may be taken during the applicant's senior year of study or at such time as may be determined by the board. The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and examination criteria.

Section 26. Any applicant for licensure as a professional engineer shall provide the following evidence satisfactory to the board:

- (1) Graduation from an accredited engineering college, university, or technical program;
- (2) Completion of the minimum number of years of diversified engineering experience under the supervision of a licensed professional engineer; and
- (3) Successful completion of examinations.

A person who has begun the requirement for licensure without minimum education and has qualifying experience as of July 1, 1999, shall apply to the board before July 1, 2004, for approval to take the examination under the qualifications that previously existed under § 36-18-

1 17.4. The board shall promulgate rules, pursuant to chapter 1-26, to establish education,  
2 experience, and examination criteria.

3 Section 27. Any applicant for licensure as an architect shall provide the following evidence  
4 satisfactory to the board:

- 5 (1) Graduation with an accredited professional degree in architecture;
- 6 (2) Completion of the national architectural intern development program; and
- 7 (3) Successful completion of examinations.

8 The board may qualify an applicant who holds a certification issued by the National Council  
9 of Architectural Registration Boards in lieu of the qualifications listed in this section. The board  
10 shall promulgate rules, pursuant to chapter 1-26, to establish education, experience, and  
11 examination criteria.

12 Section 28. Any applicant for enrollment as a land surveying intern shall provide evidence  
13 satisfactory to the board that the applicant has graduated from an accredited surveying or  
14 engineering curriculum, or substantially similar experience acceptable to the board and has  
15 passed an examination. The examination may be taken during the applicant's senior year of study  
16 or at such time as may be determined by the board. The board shall promulgate rules pursuant  
17 to chapter 1-26 to establish education, experience, and examination criteria.

18 Section 29. Any applicant for licensure as a land surveyor shall provide the following  
19 evidence satisfactory to the board:

- 20 (1) Graduation from an accredited engineering or land surveying college, university, or  
21 technical program with a minimum of twenty credit hours of surveying curriculum,  
22 or substituted experience, in whole or part, acceptable to the board;
- 23 (2) Completion of the minimum number of years of diversified surveying experience  
24 under the supervision of a licensed land surveyor; and
- 25 (3) Successful completion of examinations.

1       The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,  
2 and examination criteria.

3       Section 30. Any applicant for licensure as a landscape architect shall provide the following  
4 evidence satisfactory to the board:

- 5       (1)   Graduation from an accredited program of landscape architecture;
- 6       (2)   Completion of a council record from the Council of Landscape Architectural  
7           Registration Boards; and
- 8       (3)   Successful completion of examinations.

9       The board may qualify an applicant who holds a certification issued by the Council of  
10 Landscape Architectural Registration Boards in lieu of the qualifications listed in this section.

11      The board shall promulgate rules, pursuant to chapter 1-26, to establish education, experience,  
12 and examination criteria.

13      Section 31. Any applicant for licensure as a petroleum release assessor or remediator shall  
14 provide the following evidence satisfactory to the board:

- 15      (1)   Completion of education and experience requirements; and
- 16      (2)   Successful completion of examinations.

17      The board shall promulgate rules pursuant to chapter 1-26 to establish education, experience,  
18 and examination criteria.

19      Section 32. The board may require the applicant to appear for an oral interview if there are  
20 questions as to the depth, extent, and quality of any experience. Failure to supply additional  
21 evidence or information within thirty days from the date of a written request from the board, or  
22 failure to appear before the board if an appearance is requested, may be considered cause for  
23 disciplinary action or disapproval of an application. The board shall interpret qualifying  
24 experience and education according to the following:

- 25      (1)   Qualifying experience is diversified, general practice experience of a progressive

1 degree of difficulty, magnitude, and responsibility under proper professional guidance  
2 and supervision of licensed persons;

3 (2) For partially completed work in accredited or approved degree granting curriculums,  
4 education credit of three-fourths of a year may be allowed for each thirty semester  
5 hours of study. For work in vocational or trade schools, education credit of one-half  
6 of a year may be allowed for each thirty semester hours of study;

7 (3) Education from foreign schools shall be evaluated with accredited programs in the  
8 United States, and experience in foreign employment under licensed persons shall be  
9 evaluated by the board;

10 (4) Qualifying experience under proper professional guidance and supervision of licensed  
11 persons gained in work experience with governmental agencies, the military,  
12 construction, sales, and industry requiring the application of skills normally taught in  
13 the schools of engineering, science, architecture, or land surveying may be evaluated  
14 by the board. The board shall give credit for experience as warranted;

15 (5) Teaching at the junior year level and above of engineering, science, architectural,  
16 landscape architectural, and land surveying courses in accredited or approved  
17 curriculums is acceptable experience for a maximum of one year.

18 Section 33. The board shall admit to examination any candidate who pays a fee established  
19 by the board and submits an application with evidence satisfactory to the board that the applicant  
20 satisfies the necessary education and experience requirements. The board may require an  
21 applicant for licensure or a current licensee to take an examination as it deems necessary to  
22 determine that person's professional minimum competency. Upon approval of examination  
23 applications, examination fees may be paid by the applicant directly to a national vendor or third  
24 party. The board may hold membership in and be represented at national councils or  
25 organizations of professional practices licensed under this Act and may pay the appropriate

1 membership fees. The board may allow proctoring of examinations for approved candidates at  
2 out-of-state or overseas sites by administrators of national council member boards. The board  
3 may accept candidates to be proctored in this state from other national council member boards.  
4 A take-home questionnaire based on statutes and rules and related to professionalism and ethics  
5 may also be required. The board shall promulgate rules, pursuant to chapter 1-26, to establish  
6 application, examination, and proctor fees for all examinations.

7 Section 34. The board shall notify each applicant of the results of the examination and those  
8 entitled to licensure or enrollment. If an applicant fails the examination and the applicant's  
9 application is still current, subsequent reexaminations may be granted upon payment of a fee to  
10 be fixed by the board. The board shall promulgate rules, pursuant to chapter 1-26, to establish  
11 reexamination fees for all licensure and enrollment applicants.

12 Section 35. The board may give comity consideration to any person who holds a current and  
13 valid license issued to that person for active practice by the proper authority in any state or  
14 territory of the United States, the District of Columbia, or any foreign country, based on  
15 requirements that do not conflict with the provisions of this Act and were of a standard not lower  
16 than that specified in the applicable licensure act in effect in this state at the time such license was  
17 issued. An applicant may be required to take examinations as the board deems necessary to  
18 determine the applicant's competency. A comity applicant for landscape architecture shall hold  
19 a current and valid certification from the Council of Landscape Architectural Registration Boards  
20 to be eligible for comity licensure. The board shall promulgate rules, pursuant to chapter 1-26,  
21 relating to the application fee for licensure by comity.

22 Section 36. The board shall grant a license to any applicant as a professional engineer,  
23 architect, land surveyor, photogrammetrist, landscape architect, petroleum release assessor or  
24 remediator, or for any two or more of these titles who has met the requirements of this Act.

25 Section 37. The license shall be displayed in a conspicuous place in the licensee's principal

1 office, place of business, or place of employment within the state. A new license to replace a lost,  
2 destroyed, or mutilated license shall be issued upon payment of a fee established by the board  
3 pursuant to chapter 1-26.

4 Section 38. The recipient of a license issued under this Act may practice engineering,  
5 architecture, land surveying, photogrammetry, landscape architecture, petroleum release  
6 assessment, or petroleum release remediation and use the appropriate title professional engineer,  
7 architect, land surveyor, photogrammetrist, landscape architect, petroleum release assessor, or  
8 petroleum release remediator. A licensee may use a title either with or without prefixing the  
9 word, licensed or registered. No licensee may practice a profession or use a title unless the  
10 license specifically permits such practice and usage. An unrevoked and unexpired license issued  
11 as provided in this Act is presumptive evidence in all courts and places that the person named  
12 is legally licensed.

13 Section 39. A license expires two years after the date of issuance and becomes invalid on that  
14 date unless renewed by that date. Any professional engineer, architect, land surveyor,  
15 photogrammetrist, landscape architect, or petroleum release assessor or remediator licensed  
16 under this Act who desires to continue to practice or offer to practice the licensee's profession  
17 shall:

- 18 (1) Pay the renewal fee established by the board in rules promulgated pursuant to chapter  
19 1-26; and
- 20 (2) Successfully complete all continuing professional development requirements  
21 established by the board or make a showing of good cause why the licensee was  
22 unable to comply with such requirements.

23 The board shall promulgate rules, pursuant to chapter 1-26, to establish continuing  
24 professional education and development criteria.

25 Section 40. The board may decline to renew a license if an applicant has not completed



1 continuing professional development requirements. A license for a two-year period shall be  
2 issued upon completion of the requirements. The board may provide, by rules promulgated  
3 pursuant to chapter 1-26, for the inactive or retired status of a person who has been duly licensed  
4 under this Act and who chooses to relinquish or not to renew a license.

5 Section 41. The board shall notify by mail any person licensed under this Act of the date of  
6 expiration of the license, the requirement of professional development hours, and the amount of  
7 the fee required for renewal. The notice shall be mailed to the last known address of the licensee  
8 at least one month in advance of the date of expiration of the license. A licensee shall notify the  
9 board of any address changes.

10 Section 42. A person may reinstate an expired license or request inactive status within three  
11 years after a license's date of expiration if the person is otherwise qualified. The fee for the  
12 reinstatement of the license or requesting inactive status after it has expired shall be increased  
13 by an amount to be determined by the board in rules promulgated pursuant to chapter 1-26. A  
14 person requesting reinstatement of an expired or inactive license shall complete the requirements  
15 for continuing professional development and any reexaminations and pay any penalty fees. If a  
16 person fails to reinstate an expired license or request inactive status within the three years after  
17 the date of expiration, all relevant files shall be deleted. A person requesting licensure after three  
18 years shall submit an application for a new license.

19 Section 43. Any licensed person may request that the person's license be placed on inactive  
20 or retired status. A fee to place files on inactive or retired status shall be determined by the board  
21 in rules promulgated pursuant to chapter 1-26. Failure to render any fees required for inactive  
22 or retired status shall result in the automatic termination of inactive or retired status. The request  
23 for files to be placed on inactive or retired status may be denied by the board. No person may  
24 practice or offer to practice while that person's files are inactive or retired.

25 Section 44. Any licensed professional engineer, architect, land surveyor, photogrammetrist,

1 and landscape architect shall procure and use an appropriate seal. The seal shall contain the  
2 following information:

- 3 (1) The name, South Dakota;
- 4 (2) Licensee's name;
- 5 (3) License number; and
- 6 (4) The appropriate title or combination of titles: Professional Engineer, Architect, Land  
7 Surveyor, Landscape Architect.

8 The seal shall have an outer circle with a two-inch diameter and an inner circle with a one  
9 and one-fourth inch diameter. Titles may be prefixed with the words, Licensed or Registered.  
10 The seal may be an embossed seal, a rubber stamp, a computer-generated seal, or other facsimile  
11 found acceptable to the board. The licensee's original written signature and the date shall be  
12 adjacent to or across the seal. Computer-generated or other facsimile signatures and dates may  
13 not be used. Petroleum release assessors and remediators, or interns, may not obtain or use any  
14 seal.

15 Section 45. The application of the licensee's seal and signature and the date constitutes  
16 certification that the work on which it was applied was done by the licensee or under the  
17 licensee's responsible charge. The seal, signature, and date shall be placed in such a manner that  
18 can be legibly reproduced on the following:

- 19 (1) All originals, copies, tracings, or other reproducibles of all final drawings,  
20 specifications, reports, plats, plans, land surveys, design information, and calculations  
21 prepared by the licensee or under the licensee's responsible charge when presented  
22 to a client or any public or governmental agency. A licensee may not review or check  
23 technical submissions of another licensed professional or unlicensed person and seal  
24 the documents as the licensee's own work;
- 25 (2) Preliminary work shall contain a note that the submittal is Not for Construction,

1 Preliminary, or other such explanation that it is not final;

2 (3) In the case of multiple seals, the title or index sheet may be sealed, signed, and dated  
3 by all involved. In addition, each sheet shall be sealed, signed, and dated by the  
4 licensee or licensees responsible for that sheet;

5 (4) Drawings that are transmitted electronically to a client or governmental agency shall  
6 have the computer-generated seal removed from the original file. The electronic media  
7 shall have the following inserted in lieu of the seal, signature, and date: This document  
8 originally issued and sealed by (name of licensee/sealer), (title), (license number), on  
9 (date of sealing). This media should not be considered a certified document.

10 Section 46. No person other than an architect or professional engineer may provide  
11 architectural and engineering services which include construction administration services on  
12 projects that are not exempt pursuant to sections 2 and 3 of this Act. The architect or  
13 professional engineer of record, or another designated architect or professional engineer without  
14 conflict of interest, shall provide a written report of observed deficiencies or variations from the  
15 submitted plans and specifications to the building official, owner, and builder before project  
16 completion. The board may promulgate rules pursuant to chapter 1-26 to establish construction  
17 administration services criteria including coordinating and prime professional criteria.

18 Section 47. Any office physically located and maintained in this state to offer engineering,  
19 architectural, land surveying, photogrammetry, landscape architectural, petroleum release  
20 assessment, or petroleum release remediation services shall have an appropriately licensed person  
21 who is regularly employed in that office and who has responsible charge and direct supervision  
22 and control of all professional services. A licensee who renders occasional, part-time, or  
23 consulting services to or for a firm or office may not be designated as the person in responsible  
24 charge for the professional activities of the firm or office unless a schedule is posted at the office  
25 for the public's knowledge and filed with and approved by the board stating when the licensee

1 is physically in the office.

2 Section 48. Any business entity that desires to practice engineering, architecture, land  
3 surveying, photogrammetry, landscape architecture, or petroleum release assessment or  
4 remediation in this state shall register with the board by making application for a certificate of  
5 authorization. A business entity is responsible for the conduct or acts of its agents, employees,  
6 officers, partners, members, or managers in respect to any engineering, architecture, land  
7 surveying, landscape architecture, petroleum release assessment, or petroleum release  
8 remediation services performed or to be executed in this state. No person is relieved of the  
9 responsibility for that person's conduct or acts performed by reason of that person's employment  
10 by or relationship with a business entity. A licensee who renders occasional, part-time, or  
11 consulting services to or for a business entity may not be designated as the person in responsible  
12 charge for the professional activities of the business entity.

13 Section 49. A business entity desiring a certificate of authorization or renewal shall file a  
14 written application with the board which shall contain the following:

- 15 (1) Names and addresses of the sole proprietorship and all general and limited partners,  
16 officers, and directors of any business entity;
- 17 (2) Names and addresses of all general and limited partners, officers, directors, and  
18 employees or sole proprietors of such business entity who are duly licensed to practice  
19 engineering, architecture, land surveying, photogrammetry, landscape architecture,  
20 petroleum release assessment, or petroleum release remediation in this state and who  
21 are or will be in responsible charge of any professional services in this state by the  
22 business entity;
- 23 (3) A statement by a partner, officer, or owner that the business entity will not permit the  
24 performance of any professional service, as defined in this Act, by any person of the  
25 business entity unless the person is licensed under this Act; and

1       (4) All other information the board may deem necessary as promulgated by rule pursuant  
2           to chapter 1-26.

3       Section 50. The board shall issue a certificate of authorization or a renewal to a business  
4       entity upon receipt of an application for a certificate of authorization and a fee as set by the  
5       board pursuant to chapter 1-26 unless the board finds an error in the application or that any facts  
6       exist which would entitle the board to suspend or revoke the certificate if issued to the applicant.  
7       The certificate of authorization is not transferable.

8       Section 51. The business entity shall file with the board a written report of any change in the  
9       information submitted on the application that occurs during the term of the certificate of  
10      authorization. The business entity shall report the change within thirty days after the effective  
11      date of the change. Failure to provide the report constitutes grounds for the board to suspend  
12      or revoke the certificate of authorization.

13      Section 52. The provisions with respect to issuance, expiration, renewal, and reissuance of  
14      the certificate of licensure of persons contained in this Act apply to certificates of authorization  
15      issued to business entities under the provisions of this Act. A business entity is subject to  
16      disciplinary proceedings and penalties, and certificates of authorization are subject to suspension  
17      or revocation for cause, in the same manner and to the same extent as is provided with respect  
18      to individuals and their certificates of licensure in this Act. The terms, licensee and certificate  
19      of licensure, as used in this Act, apply to any business entity holding a certificate of authorization  
20      issued under this Act and to such certificate of authorization.

21      Section 53. A violation of any of the provisions of this Act by a business entity is not grounds  
22      for the revocation, suspension, or refusal to renew a license of an individual employee of the  
23      business entity unless the board finds that the employee was a party to the violation.

24      Section 54. The board shall inquire into the identity of any person alleged to be engaging in  
25      the unlawful practice of engineering, architecture, land surveying, photogrammetry, landscape

1 architecture, petroleum release assessment, or petroleum release remediation. The board shall  
2 investigate alleged violations of the provisions of this Act, and report to the proper state's  
3 attorney or the attorney general any person or case that in the judgment of the board warrants  
4 prosecution. The attorney general or the several state's attorneys may prosecute violations of  
5 this Act in the name or on behalf of the board.

6 Section 55. When investigating alleged violations, the board may administer oaths to  
7 witnesses appearing before the board, subpoena licensees as witnesses and compel their  
8 attendance, and require the submittal of plans, specifications, books, records, papers, and other  
9 documents. If a licensee refuses to obey any subpoena, or refuses to testify or produce any  
10 materials required, the board may take disciplinary action or present its petition to the court of  
11 the county in which the licensee resides, and the court may enter a suitable order compelling  
12 compliance with the provisions of this Act and imposing such other terms and conditions as the  
13 court may deem suitable. The board may also summon nonlicensees as witnesses and request  
14 their attendance, and request the submittal of plans, specifications, books, records, papers, and  
15 other documents. If a nonlicensee refuses to cooperate, testify, or produce any materials  
16 requested, the board may petition the court of the county in which the nonlicensee resides, and  
17 the court may enter a suitable order compelling compliance with the provisions of this Act and  
18 imposing such other terms and conditions as the court may deem suitable.

19 Section 56. The board may take action without proof of actual injury on the following  
20 violations:

- 21 (1) Has violated any statute, rule, or order that the board has issued or is empowered to  
22 enforce;
- 23 (2) Has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether  
24 or not the conduct or acts relate to professional practice;
- 25 (3) Has engaged in conduct or acts that are grossly negligent, incompetent, reckless, or

1 otherwise in violation of established standards related to that person's professional  
2 practice;

3 (4) Has been convicted of or has pleaded guilty or nolo contendere to a felony, whether  
4 or not the person admits guilt, or has been shown to have engaged in acts or practices  
5 tending to show that the applicant or licensee is incompetent or has engaged in  
6 conduct reflecting adversely on the person's ability or fitness to engage in that  
7 person's professional practice. A copy of the record of conviction or plea of guilty or  
8 nolo contendere is conclusive evidence;

9 (5) Has employed fraud or deception in obtaining a license or renewal of a license or in  
10 passing all or a portion of the examination;

11 (6) Has had that person's professional license, registration, certificate, right to  
12 examination, or other similar rights to practice revoked, suspended, canceled, given  
13 probation, limited, censured, reprimanded, or not renewed for cause in any state or  
14 territory of the United States, the District of Columbia, or in any foreign country;

15 (7) Failed to meet any requirement for issuance or renewal of the person's license or  
16 certificate;

17 (8) Has used or attempted to use as that person's own the certificate or seal of another;

18 (9) Has used or attempted to use an expired, suspended, or revoked license;

19 (10) Has placed that person's seal or signature to a plan, specification, report, plat, or  
20 other technical submission or document not prepared by that person or under that  
21 person's responsible charge;

22 (11) Aided or assisted another person in violating any provision of this Act or the rules  
23 pertaining to this Act;

24 (12) Failed to promptly and appropriately provide information requested by the board as  
25 a result of a formal or informal complaint to the board which would indicate a

1 violation of this Act;

2 (13) Has provided false testimony or information to the board;

3 (14) Failed to report known violations of this Act;

4 (15) Has engaged in the use of untruthful or improbable statements in advertisements;

5 (16) Failed to complete continuing professional development requirements set by the  
6 board;

7 (17) Made misleading or untruthful representations in advertisements or published  
8 materials;

9 (18) Falsely used any title, figures, letters, or descriptions to imply licensure;

10 (19) Is habitually intoxicated or is addicted to the use of alcohol or illegal drugs;

11 (20) Has committed an act, engaged in conduct, or committed practices that may result in  
12 an immediate threat to the public; or

13 (21) Has provided professional services in technical areas not covered by that person's  
14 license or competency.

15 Section 57. If the board determines that a person or business entity is in violation of this Act,  
16 the board may take the following actions:

17 (1) Deny an application;

18 (2) Suspend, temporarily suspend, revoke, or refuse to renew an enrollment or license;

19 (3) Place on probation, condition, or limit a licensee's practice;

20 (4) Reimburse the board for expenses, fine, censure, or reprimand a person or business  
21 entity;

22 (5) Refuse to permit a person to sit for examination or refuse to release a person's  
23 examination scores;

24 (6) Require a person to sit for a reexamination; and

25 (7) Pursue legal actions against a person or business entity that is not licensed to offer or



1 render practices covered by this Act.

2 Section 58. In lieu of or in addition to any disciplinary remedy provided in section 57 of this  
3 Act or civil remedy provided in section 61 of this Act, the board may require, as a condition of  
4 continued licensure, termination of suspension, reinstatement of license, examination, or release  
5 of examination grades, that the person:

6 (1) Submit to a qualifying review of the person's ability, skills, or quality of work. The  
7 person may be required to attend remedial education courses; and

8 (2) Complete to the satisfaction of the board continuing professional education courses  
9 as the board may specify by rule or order, pursuant to chapter 1-26.

10 Section 59. Proceedings for the revocation or suspension of a license shall be conducted  
11 pursuant to chapter 1-26 and rules promulgated pursuant to this Act.

12 Section 60. The findings and actions of the board on disciplinary matters shall be subject to  
13 appeal as provided by chapter 1-26 and rules promulgated pursuant to this Act.

14 Section 61. Any person who has violated any provision of this Act or any rule promulgated  
15 pursuant to this Act, is subject to the following penalties:

16 (1) Administrative fine:

17 (a) Licensed person: Any person licensed by the board who violates any provision  
18 of this Act is liable for an administrative fine not to exceed two thousand  
19 dollars for each offense;

20 (b) Licensed business entity: Any business entity permitted to practice by the board  
21 that violates any provision of this Act is liable for an administrative fine not to  
22 exceed five thousand dollars for each offense.

23 An administrative fine not paid within sixty days from the date of the order imposing  
24 the fine may be enforced by an action in the appropriate county circuit court. Any  
25 person aggrieved by an order under this subdivision may make an appeal pursuant to

chapter 1-26;

(2) Injunction: If the board deems it necessary for the public safety, it may bring an action in the name of the state in the circuit court in any county in which jurisdiction is proper to enjoin the act, practice, or violation and to enforce compliance with this Act or any rule promulgated pursuant to this Act. Upon showing that a person has engaged in an otherwise unauthorized act or practice, a permanent or temporary injunction, or restraining order, or other appropriate relief shall be obtained against the person to prohibit the continuation of the unauthorized act or practice. If a person has caused a structure to be designed, constructed, or built by engaging in an unauthorized act or practice, a permanent or temporary injunction or restraining order, or other appropriate relief, shall be obtained against the project prohibiting the use and occupancy of any structure. For purposes of injunctive relief under this subdivision, irreparable harm exists if the board shows that a person has engaged in an act or practice constituting the unauthorized use of a title, words, figures, or sign implying licensure, or a violation of a statute, rule, or order that the board has issued or is empowered to enforce;

(3) Cease and desist order: The board may issue and have served upon a person an order requiring the person to cease and desist from any unauthorized practice or act which is in violation of this Act or any rule promulgated pursuant to this Act. The cease and desist order shall give reasonable notice of the rights of the person to request a hearing pursuant to chapter 1-26 and shall state the reasons for the entry of the order.

Section 62. Service of the order is effective if the order is served on the person or counsel of record personally or by certified mail to the most recent address provided to the board for the person or counsel of record. Unless otherwise agreed by the board and the person requesting the hearing, the hearing shall be held no later than ninety days after the request for the hearing is

1 received by the board.

2 Section 63. The board or administrative law judge shall issue a report within thirty days of  
3 the close of the contested case hearing record. Within thirty days after the report and any  
4 exceptions to it, the board shall issue a further order vacating, modifying, or making permanent  
5 the cease and desist orders as the facts require.

6 Section 64. If no hearing is requested within the thirty days of service of the order, the order  
7 becomes final and remains in effect until it is modified or vacated by the board. If the person to  
8 whom a cease and desist order is issued fails to appear at the hearing after being duly notified,  
9 the person is in default and the proceeding may be determined against that person upon  
10 consideration of the cease and desist order, the allegations of which may be considered to be  
11 true. Action taken pursuant to this section does not relieve a person from criminal prosecution  
12 by a competent authority or from disciplinary action by the board with respect to the person's  
13 license, registration, certification, application for examination, or renewal.

14 Section 65. No person may:

15 (1) Practice, or offer to practice, the professions of engineering, architecture, land  
16 surveying, photogrammetry, landscape architecture, petroleum release assessment, or  
17 petroleum release remediation in this state without being licensed or exempt in  
18 accordance with the provisions of this Act;

19 (2) Use or employ the title of architect, landscape architect, land surveyor,  
20 photogrammetrist, professional engineer, petroleum release assessor, or petroleum  
21 release remediator with or without qualifying adjectives without being licensed in  
22 accordance with the provisions of this Act;

23 (3) Use any other words, letters, or figures indicating or intending to imply that the  
24 person is a professional engineer, architect, land surveyor, photogrammetrist,  
25 landscape architect, petroleum release assessor, or petroleum release remediator

1 without being licensed in accordance with the provision of this Act;

2 (4) Present or attempt to use the certificate of licensure or seal of another, or affix a  
3 professional engineer's, architect's, land surveyor's, photogrammetrist's, or landscape  
4 architect's seal on any plans, specifications, drawings, or other technical submittals  
5 which have not been prepared by that person or under that person's responsible  
6 charge and direct personal supervision;

7 (5) Present any false or forged evidence of any kind to the board in obtaining a certificate  
8 of licensure;

9 (6) Falsely impersonate any other licensee;

10 (7) Attempt to use an expired, suspended, or revoked license;

11 (8) Knowingly allow person's name or seal to be used upon plans or work not actually  
12 performed by that person or under that person's responsible charge and direct  
13 supervision; or

14 (9) By act of commission or omission, violates any of the provisions of this Act.

15 A violation of this section is a Class 1 misdemeanor for the first offense and a Class 6 felony  
16 for any second or subsequent offense.

17 Section 66. No person may:

18 (1) Accept or contract to receive, directly or indirectly, any commission, percentage, gift,  
19 or other item of value for that person's influence in securing a contract or approving  
20 the performance of a contract, from any manufacturer, agent, or vendor of any  
21 material of any sort used or recommended to be used in the construction of any  
22 project for the plans or construction of which any person is employed; or

23 (2) Give or offer to give to any person any commission, percentage, gift, or other item  
24 of value for that person's influence in securing a contract or approving the  
25 performance of a contract or supplying any material of any sort which may be for

1 consideration in the construction of any project. A violation of this section is a Class  
2 2 misdemeanor for the first offense and a Class 1 misdemeanor for the second or any  
3 subsequent offense.

4 Section 67. The board may impose a fee to reimburse the board for all or part of the cost of  
5 proceedings resulting in disciplinary action authorized by this Act, the imposition of civil  
6 penalties, or the issuance of a cease and desist order. The fee may be imposed if the board shows  
7 a person has committed an act or engaged in unauthorized practice, including the unauthorized  
8 use of a title, words, figures, or signs implying licensure, or has violated a statute, rule or order  
9 of the board. The costs include the amount paid by the board for services from attorney fees,  
10 investigators, court reporters, witnesses, expert witnesses, reproduction of records, board  
11 members' per diem compensation, board staff time, and expense incurred by board members and  
12 staff.

13 Section 68. A professional engineer, architect, land surveyor, photogrammetrist, landscape  
14 architect, petroleum release assessor, or petroleum release remediator is not liable for the safety  
15 of persons or property on or about a construction project site, or for the construction techniques,  
16 procedures, sequences, and schedules, or for the conduct, action, errors, or omissions of any  
17 construction contractor, subcontractor, construction manager, or material supplier, their agents  
18 or employees, unless that person assumes responsibility therefor by contract or by that person's  
19 actual conduct. This section does not relieve a professional engineer, architect, land surveyor,  
20 landscape architect, petroleum release assessor, or petroleum release remediator from liability  
21 for that person's negligence in design work.

22 Section 69. Any contract, written or oral, for engineering, architectural, land surveying,  
23 photogrammetry, landscape architectural, petroleum release assessment, or petroleum release  
24 remediation services made by any person in violation of any provision of this Act is  
25 unenforceable as to such services. It is a complete defense to any action to enforce payment for

1 any services, if the party contracting for services proves that the person rendering or offering to  
2 render services was not at the time such services were offered or rendered, legally authorized to  
3 contract for such services.

4 Section 70. No public officer or employee, as defined in subdivisions 22-1-2(37) and (39),  
5 charged with the authority or responsibility of approving or accepting plans, specifications, plats,  
6 or any other technical submissions, may accept or approve such plans, specifications, plats, or  
7 technical submissions which have been prepared in violation of this Act.

8 The building official shall require the owner to engage and designate an architect or  
9 professional engineer who shall act as the architect or professional engineer of record on projects  
10 that are not exempt. If the circumstances require, the owner may designate a substitute architect  
11 or professional engineer of record who shall perform all of the duties required of the original  
12 architect or professional engineer of record. The building official shall be notified in writing by  
13 the owner if the architect or professional engineer of record is changed or is unable to continue  
14 to perform the duties. The architect or professional engineer of record is responsible for  
15 reviewing and coordinating all submittal documents prepared by others, including deferred  
16 submittal items, for compatibility with the design of the building. A building permit issued with  
17 respect to technical submissions which do not conform with the requirements of this Act are  
18 invalid.

19 Section 71. No register of deeds of any county may file or record any map, plat, survey, or  
20 other technical submissions within the definition of land surveying which does not have  
21 impressed thereon and affixed thereto the personal signature, seal, and date of a land surveyor  
22 by whom or under whose responsible charge and direct personal supervision the map, plat,  
23 survey, or other technical submissions were prepared.

24 Section 72. The board may promulgate rules, pursuant to chapter 1-26, regarding procedures  
25 and standards for certifying those who perform environmental technical services relative to site

1 assessment, remedial investigations, and corrective actions necessary to remediate water or soil  
2 contaminated with a regulated substance and to establish fees to support this activity. Procedures  
3 and requirements may be promulgated by rule for determining eligibility, denial, suspension, and  
4 revocation of certification. Standards may include more than one level of certification for persons  
5 and business entities, any combination of academic background, professional experience, testing,  
6 or other technical professional licenses. Any person or business entity who practices without  
7 certification pursuant to this section is guilty of a Class 1 misdemeanor.

8 Section 73. No person or business entity may perform environmental technical services  
9 without certification. A violation of this section is a Class 1 misdemeanor.

10 Section 74. That §§ 36-18-4.1 to 36-18-73, inclusive, be repealed.

11 Section 75. All licenses and enrollments in effect on July 1, 1999, and issued pursuant to  
12 chapter 36-18, are continued for the balance of the term for which last issued.

13 Section 76. For the purposes of this Act, the term, practice of photogrammetry, means the  
14 process of images on a photograph which includes photographing an object, measuring the image  
15 of the object on the process photographs, and reducing the measurements to useful form such  
16 as a topographic map.

17 Section 77. Any applicant for licensure to practice photogrammetry shall provide the  
18 following evidence satisfactory to the board:

- 19 (1) Graduation from an accredited surveying or related field of study approved by the  
20 board or substituted experience, in whole or part, acceptable to the board;
- 21 (2) Completion of the minimum number of years of photogrammetric experience under  
22 the supervision of a licensed photogrammetrist; and
- 23 (3) Successful completion of examinations.

24 Section 78. A person shall be licensed, upon application, to practice photogrammetry if the  
25 person applies to the board before July 1, 2001, and meets the following criteria:

1       (1)   Is currently using photogrammetric technologies with at least eight years of  
2           experience in the profession, two or more in responsible charge of photogrammetric  
3           mapping projects meeting Aerial Photography and Mapping Standards of the  
4           American Society for Photogrammetry and Remote Sensing or United States National  
5           Map Accuracy Standards;

6       (2)   Submits proof of education which may be one of the following:

7           (a)   High school graduation or equivalency;

8           (b)   A baccalaureate degree in surveying or a related field, which shall substitute for  
9               four of the required years of experience; or

10          (c)   A master's degree in surveying or a related field, which shall substitute for five  
11               of the required years of experience;

12       (3)   Submits proof of employment in responsible charge of photogrammetric mapping  
13           projects; and

14       (4)   Submits five references from licensed land surveyors, professional engineers, or others  
15           practicing in the area of mapping.

16       The board shall promulgate rules, pursuant to chapter 1-26, to establish education,  
17       experience, and examination criteria.



1    **BILL HISTORY**

2    2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3    2/2/99 Referred to Commerce. H.J. 318

4    2/9/99 Scheduled for Committee hearing on this date.

5    2/16/99 Scheduled for Committee hearing on this date.

6    2/16/99 Commerce Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 527

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0825

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB1298** - 2/16/99

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to require all programs and degrees provided by the Board  
2 of Regents be offered or conferred by the existing institutions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 13-53 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The Board of Regents may at noncampus locations across the state provide such academic  
7 programs as the board deems appropriate. However, all such academic programs shall be offered  
8 directly by the following institutions:

- 9 (1) University of South Dakota;
- 10 (2) South Dakota State University;
- 11 (3) South Dakota School of Mines and Technology;
- 12 (4) Northern State University;
- 13 (5) Black Hills State University; or
- 14 (6) Dakota State University.

15 No postsecondary degrees may be awarded or conferred except by the above institutions.

1    **BILL HISTORY**

2    2/1/99 First read in House and referred to committee assignment waived. H.J. 287

3    2/2/99 Referred to State Affairs. H.J. 319

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 State Affairs Do Pass, Failed, AYES 5, NAYS 8.

6    2/8/99 State Affairs Deferred to another day.

7    2/10/99 Scheduled for Committee hearing on this date.

8    2/12/99 State Affairs Hog Housed.

9    2/12/99 State Affairs Do Pass Amended, Passed, AYES 11, NAYS 0. H.J. 506

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

862C0860

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB1301** - 2/16/99

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives Windhorst, Cutler, Smidt, Waltman, Wetz, and Young and  
Senators Staggers and Olson

1 FOR AN ACT ENTITLED, An Act to limit the liability resulting from the manufacture,  
2 distribution, and sale of firearms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature finds that the unlawful use of firearms, rather than their lawful  
5 manufacture, distribution, or sale, is the proximate cause of any injury arising from their unlawful  
6 use.

7 Section 2. No firearm manufacturer, distributor, or seller who lawfully manufactures,  
8 distributes, or sells a firearm is liable to any person or entity, or to the estate, successors, or  
9 survivors of either, for any injury suffered, including wrongful death and property damage,  
10 because of the use of such firearm by another.

11 Section 3. No association of persons who hold licenses under Section 923 of Chapter 44 of  
12 Title 18, United States Code, is liable to any person or entity, or to the estate, successors, or  
13 survivors of either, for any injury suffered, including wrongful death and property damage,  
14 because of the use of a firearm sold or manufactured by any licensee who is a member of such  
15 association.

1       Section 4. The provisions of this Act do not apply to actions for deceit, breach of contract,  
2       or expressed or implied warranties, or for injuries resulting from defects or negligence in design  
3       or manufacture. The provisions of this Act do not apply to actions arising from the unlawful sale  
4       or transfer of firearms, or to instances where the transferor knew, or should have known, that  
5       the recipient would engage in the unlawful sale or transfer of the firearm, or would use, or  
6       purposely allow the use of, the firearm in an unlawful, negligent, or improper fashion.

7       For purposes of this section, the potential of a firearm to cause serious injury, damage, or  
8       death as a result of normal function does not constitute a defective condition of the product. A  
9       firearm may not be deemed defective on the basis of its potential to cause serious injury, damage,  
10      or death when discharged.

1    **BILL HISTORY**

2    2/1/99 First read in House and referred to committee assignment waived. H.J. 288

3    2/2/99 Referred to Judiciary. H.J. 319

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 Judiciary Deferred to another day.

6    2/10/99 Scheduled for Committee hearing on this date.

7    2/10/99 Judiciary Deferred to another day.

8    2/12/99 Judiciary Hog Housed.

9    2/12/99 Scheduled for Committee hearing on this date.

10   2/12/99 Judiciary Do Pass Amended, Passed, AYES 9, NAYS 3. H.J. 502

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

771C0075

## SENATE LOCAL GOVERNMENT COMMITTEE ENGROSSED NO. **SB34** - 1/19/99

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain requirements concerning the certificate for  
2 nomination and to provide certain rule-making authority.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-7-1 be amended to read as follows:

5 12-7-1. Any candidate for nonjudicial public office who is not nominated by a primary  
6 election may be nominated by filing with the secretary of state or county auditor as prescribed  
7 by § 12-6-4, not prior to ~~May~~ January first at eight a.m. and not later than the ~~first Tuesday in~~  
8 ~~August~~ third Tuesday in June at five p.m. prior to the election, a certificate of nomination, ~~in the~~  
9 ~~form prescribed by the State Board of Elections and~~ which shall ~~otherwise~~ be executed as  
10 provided in chapter 12-6. If the certificate of nomination is mailed by registered mail by the ~~first~~  
11 ~~Tuesday of August~~ third Tuesday in June at five p.m. prior to the election, it ~~shall be considered~~  
12 ~~filed~~ is timely submitted. The certificate shall specify that an independent candidate for  
13 nonjudicial public office shall designate the name of any national political party, or political party  
14 organized pursuant to chapter 12-5, with which the candidate has an affiliation. If no affiliation  
15 exists, the candidate shall ~~designate "independent."~~ be designated by the term, no party. It shall

1 be signed by ~~not less than one percent of the~~ registered voters ~~residing~~ within the district or  
2 political subdivision in and for which the officers are to be elected, ~~based upon~~. The number of  
3 signatures required may not be less than one percent of the total combined vote cast for  
4 Governor at the last certified gubernatorial election within the district or political subdivision.  
5 An independent candidate for Governor shall certify ~~his~~ the candidate's selection for lieutenant  
6 governor to the secretary of state prior to circulation of ~~his~~ the candidate's nominating petition.  
7 An independent candidate for President shall file a declaration of candidacy and a certification  
8 of ~~his~~ the candidate's selection for vice president with the secretary of state prior to circulation  
9 of ~~his~~ the candidate's nominating petitions. The candidate and the candidate's selection for  
10 lieutenant governor or vice president shall sign the certification before it is filed. The State Board  
11 of Elections shall promulgate rules pursuant to chapter 1-26 prescribing the forms for the  
12 certificate of nomination and the certification for lieutenant governor and vice president.



1    **BILL HISTORY**

2    1/12/99 First read in Senate and referred to Local Government. S.J. 21

3    1/16/99 Scheduled for Committee hearing on this date.

4    1/16/99 Local Government Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 58

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

178C0494

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB79** - 1/30/99

Introduced by: Senators Albers, Ham, and Vitter and Representatives Weber and Engbrecht

1 FOR AN ACT ENTITLED, An Act to revise the liability for misdemeanor violations of certain  
2 provisions concerning the illegal sale or distribution of tobacco products.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-46-5 be amended to read as follows:

5 34-46-5. A violation of § 34-46-2 is a Class 2 misdemeanor. A person is not liable for more  
6 than one violation of § ~~34-46-2~~ subdivision 34-46-2(4) on a single day. Reasonable reliance upon  
7 proof of age of the purchaser or the recipient of a tobacco product is a complete defense to any  
8 action brought against a person for the sale or distribution of a tobacco product to a person  
9 under the age of eighteen.

10 Section 2. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 No person may be charged with more than one violation in any twenty-four hour period  
13 which results from sales to persons purchasing during unannounced random inspections.

1    **BILL HISTORY**

2    1/21/99 First read in Senate and referred to Judiciary. S.J. 144

3    1/25/99 Scheduled for Committee hearing on this date.

4    1/25/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 174

5    1/27/99 Referred to Judiciary. S.J. 221

6    1/29/99 Scheduled for Committee hearing on this date.

7    1/29/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 251

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

925C0042

SENATE JUDICIARY COMMITTEE

ENGROSSED NO. **SB80** - 1/25/99

Introduced by: Senators Albers, Benson, Ham, Kleven, Staggers, and Vitter and  
Representatives Hennies, Engbrecht, and Weber

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions relating to the disposition of  
2 certain controlled weapons or firearms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-37-9 be amended to read as follows:

5 23A-37-9. Articles of contraband or property of an illegal nature shall be destroyed, except  
6 that any articles which are capable of lawful use may in the discretion of the court be sold and  
7 the proceeds disposed of as provided in § 23A-37-10. ~~If there is no claimant or if the right to~~  
8 ~~possession or ownership of seized controlled weapon or firearm cannot be determined after a~~  
9 ~~reasonable period of time, the controlled weapon or firearm shall be delivered to the state~~  
10 ~~forensic laboratory within the office of attorney general. The state forensic laboratory may retain~~  
11 ~~the controlled weapon or firearm for scientific examination purposes or destroy the firearm or~~  
12 ~~controlled weapon. However, the provisions of § 23A-37-13 apply to any controlled weapon or~~  
13 firearm.

14 Section 2. That § 23A-37-13 be amended to read as follows:

15 23A-37-13. Any controlled weapon or firearm used in violation of chapter 22-14 shall be  
16 disposed of as follows:

- 1       (1)    If it is stolen, it shall be returned to the lawful owner upon proof of ownership; or
- 2       (2)    If it is illegal, it shall be destroyed pursuant to law; or
- 3       (3)    If it is neither stolen nor illegal, it shall be delivered to the arresting agency or, at the
- 4            direction of the attorney general, to the South Dakota Forensic Laboratory for
- 5            scientific examination purposes, for lawful use or disposal.

6        In the case of a disposition pursuant to subdivision (3), the arresting agency may use,

7        trade-in, or destroy the controlled weapon or firearm.

1    **BILL HISTORY**

2    1/21/99 First read in Senate and referred to Judiciary. S.J. 144

3    1/25/99 Scheduled for Committee hearing on this date.

4    1/25/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 174

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

264C0483

## SENATE ENGROSSED NO. **SB95** - 2/2/99

Introduced by: Senators Kloucek, Dennert, Hutmacher, and Symens and Representatives  
Chicoine, Brown (Jarvis), Crisp, Haley, Koehn, Kooistra, Lucas, Nachtigal,  
Waltman, Weber, and Wilson

1 FOR AN ACT ENTITLED, An Act to regulate certain livestock packer transactions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in the Act mean:

4 (1) "Livestock," live cattle, swine, or sheep;

5 (2) "Packer," a person who is engaged in the business of slaughtering livestock or  
6 receiving, purchasing, or soliciting livestock for slaughtering, the meat products of  
7 which are directly or indirectly to be offered for resale or for public consumption.

8 Packer includes an agent of the packer engaged in buying or soliciting livestock for  
9 slaughter on behalf of a packer. Packer does not include a cold storage plant or frozen  
10 food locker plant.

11 Section 2. A packer purchasing or soliciting livestock for slaughter in this state may not  
12 discriminate in prices paid or offered to be paid to sellers of that livestock. This section does not  
13 apply to the sale and purchase of livestock if the following requirements are met:

14 (1) The price differential is based on the quality of the livestock, if the packer purchases  
15 or solicits the livestock based upon a payment method specifying prices paid for  
16 criteria relating to carcass merit; actual and quantifiable costs related to transporting

1 and acquiring the livestock by the packer; or an agreement for the delivery of  
2 livestock at a specified date or time; and

3 (2) After making a differential payment to a seller, the packer publishes information  
4 relating to the differential pricing, including the payment method for carcass merit,  
5 transportation and acquisition pricing, and an offer to enter into an agreement for the  
6 delivery of livestock at a specified date or time according to the same terms and  
7 conditions offered to other sellers.

8 Section 3. A packer shall provide all sellers with the same terms and conditions offered to  
9 a seller who receives a differential price based on any of the criteria described in section 2 of this  
10 Act.

11 Section 4. A packer shall, at the end of each day during which livestock are purchased or  
12 contracted, provide to the United States Department of Agriculture, agricultural market service  
13 livestock market news branch, and the South Dakota Department of Agriculture, all prices paid  
14 for livestock, both contract and direct purchased, that day.

15 Section 5. Any agreement made by a packer in violation of this Act is voidable. Any packer  
16 acting in violation of this section is guilty of a fraudulent practice.

17 Section 6. The attorney general shall enforce the provisions of this Act and the Department  
18 of Agriculture shall refer any violations of these provisions to the attorney general. The attorney  
19 general or any person injured by a violation of these provisions may bring an action in circuit  
20 court to restrain a packer from violating these provisions. A seller who receives a discriminatory  
21 price or who is offered only a discriminatory price for livestock based upon a violation of these  
22 provisions by a packer has a civil cause of action against the packer and, if successful, shall be  
23 awarded treble damages.

24 Section 7. Any packer shall make available for publication and to the Department of  
25 Agriculture, a daily report setting forth information regarding prices paid for livestock, under



1 each contract in force, in which the packer and a South Dakota resident are parties for the  
2 purchase of the livestock by the packer, and which sets a date for delivery more than twenty days  
3 after the making of the contract.

4 The reports shall be completed on forms prepared by the department for comparison with  
5 cash market prices for livestock according to procedures required by the department in rules  
6 promulgated pursuant to chapter 1-26. The report may not include information regarding the  
7 identity of a seller.

8 A failure of a packer to report as required by this section is punishable by a civil penalty not  
9 to exceed one thousand dollars for each day that a timely or truthful report is not published. The  
10 department shall refer to the attorney general any packer or packer's agent who the department  
11 believes is in violation of the provisions of this Act. The attorney general may, upon referral from  
12 the department, file an action in circuit court to enforce these provisions.

1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Agriculture and Natural Resources. S.J. 159

3    1/26/99 Scheduled for Committee hearing on this date.

4    1/28/99 Scheduled for Committee hearing on this date.

5    1/28/99 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 8, NAYS 1.

6    S.J. 230

7    2/1/99 Motion to Amend, Passed. S.J. 286

8    2/1/99 Senate Do Pass Amended, Passed, AYES 21, NAYS 12. S.J. 287

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

375C0098

## SENATE ENGROSSED NO. **SB103** - 2/9/99

Introduced by: Senators Brosz, Brown (Arnold), Frederick, Reedy, and Shoener and  
Representatives Konold, Duniphan, Frysliie, Haley, Munson (Donald), and  
Solum

1 FOR AN ACT ENTITLED, An Act to revise the election procedure for forming a municipality.  
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 9-3-3 be amended to read as follows:

4 9-3-3. ~~Such persons~~ Any person making application for the organization of a municipality  
5 shall cause an accurate census to be taken of the landowners and the resident population of the  
6 ~~territory included in said map as of a day~~ proposed municipality not more than thirty days  
7 previous to the time of presenting ~~such~~ the application to the board of county commissioners ~~as~~  
8 ~~hereinafter provided. Such.~~ The census shall exhibit the name of ~~every head of a family~~ each  
9 landowner and person residing ~~within such territory on such day in the proposed municipality and~~  
10 the number of persons belonging to ~~every such~~ each family ~~and shall also state the names of all~~  
11 ~~persons residing within such territory at such time. It~~ as of a certain date. The census shall be  
12 verified by the affidavit of the person taking the ~~same~~ census.

13 Section 2. That § 9-3-5 be amended to read as follows:

14 9-3-5. The application for incorporation shall be by a petition ~~subscribed and~~ verified by the  
15 ~~applicants and subscribed~~ circulator and signed by not less than ~~fifteen~~ twenty-five percent of the  
16 ~~registered voters residing within such territory, based upon the total number of registered voters~~

1 ~~at the last preceding general election. It~~ qualified voters who are either registered voters in the  
2 proposed municipality or landowners in the proposed municipality who are also registered voters  
3 of this state. The application shall set forth identify the type of government to be formed, the  
4 number of trustees, commissioners, or wards in the municipality, the boundaries and area thereof  
5 according to the survey, and the resident population thereof according to the census taken. It  
6 The application shall be presented at the time indicated in the notice of such the application or  
7 as soon thereafter as the board of county commissioners can receive and consider the same  
8 application.

9 Section 3. That § 9-3-6 be amended to read as follows:

10 9-3-6. If the board, after proof by affidavit or oral examination of witnesses, ~~shall be is~~  
11 satisfied that the requirements of this chapter have been fully complied with, ~~it~~ the board shall  
12 make an order declaring that ~~such territory~~ the proposed municipality shall, with the assent of  
13 the qualified voters who are either registered voters in the proposed municipality or landowners  
14 in the proposed municipality who are also registered voters thereof as hereinafter provided of  
15 this state, be an incorporated municipality by the name specified in the application. ~~Such~~ The  
16 name shall be different from that of any other municipality in this state. ~~It~~ The board shall also  
17 include in ~~such the~~ order a notice for a meeting ~~of the voters resident in the proposed~~  
18 ~~municipality, at a convenient place therein, on some day within one month therefrom, to~~  
19 ~~determine whether such territory shall become an incorporated municipality and election to be~~  
20 held as provided in §§ 6-16-3 to 6-16-5, inclusive.

21 Section 4. That § 9-3-17 be amended to read as follows:

22 9-3-17. ~~There shall be~~ Each official elected at the first election ~~three trustees at large, who~~  
23 shall hold ~~their offices~~ office until the first Monday in May next following or until ~~their~~  
24 ~~successors are elected and qualified. The trustees shall appoint a finance officer and a treasurer~~  
25 a successor is elected and qualified.

1       Section 5. That § 9-3-7 be repealed.

2       ~~9-3-7. The board shall give ten days' notice of such meeting by publication and by posting~~  
3       ~~a copy of such notice at ten of the most public places in the proposed municipality.~~

4       Section 6. That § 9-3-8 be repealed.

5       ~~9-3-8. At such meeting the polls shall be kept open from nine o'clock in the forenoon until~~  
6       ~~four o'clock in the afternoon.~~

7       Section 7. That § 9-3-9 be repealed.

8       ~~9-3-9. The voters at such meeting shall first elect three inspectors, who shall elect one of~~  
9       ~~their number as clerk and shall without delay open the polls to receive the ballots of the voters.~~

1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Local Government. S.J. 161

3    1/27/99 Scheduled for Committee hearing on this date.

4    2/1/99 Scheduled for Committee hearing on this date.

5    2/1/99 Local Government Do Pass, Passed, AYES 4, NAYS 1. S.J. 271

6    2/2/99 Senate Deferred to another day. S.J. 304

7    2/4/99 Senate Deferred to another day. S.J. 337

8    2/8/99 Motion to Amend, Passed. S.J. 370

9    2/8/99 Senate Do Pass Amended, Passed, AYES 26, NAYS 8. S.J. 370

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

851C0518

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB106** - 1/30/99

Introduced by: Senators Hainje, Albers, Ham, Kleven, and Vitter and Representatives Michels, Duniphan, Fitzgerald, Koetzle, and McNenny

1 FOR AN ACT ENTITLED, An Act to increase the penalty for failure to stop for an emergency  
2 vehicle.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-31-6.1 be amended to read as follows:

5 32-31-6.1. Upon approaching from any direction any stopped authorized emergency vehicle  
6 making use of visual signals meeting the requirements of this chapter, the driver of ~~every~~ any  
7 other vehicle shall come to a complete stop before ~~he~~ the driver reaches the stopped emergency  
8 vehicle ~~and~~. The driver may, unless otherwise directed, proceed with caution only after ~~he~~ the  
9 driver has ascertained that it is safe to do so. A violation of this section is a Class 2 misdemeanor.  
10 However, a violation of this section is a Class 1 misdemeanor if the emergency vehicle referred  
11 to in this section is an ambulance, fire department vehicle, or a rescue vehicle which is at the  
12 scene of an accident or a fire and the failure to stop results in an injury to an emergency worker  
13 or damage to any such authorized emergency vehicle.

1    **BILL HISTORY**

2    1/22/99 First read in Senate and referred to Judiciary. S.J. 161

3    1/27/99 Scheduled for Committee hearing on this date.

4    1/29/99 Scheduled for Committee hearing on this date.

5    1/29/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 251



# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

543C0628

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB126** - 2/16/99

Introduced by: Senators Lawler, Dennert, Hainje, and Munson (David) and Representatives Cutler, Diedrich (Elmer), Fischer-Clemens, Hennies, Sutton (Duane), and Waltman

1 FOR AN ACT ENTITLED, An Act to provide for the confidentiality of certain ambulance  
2 patient information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 34-11 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any patient information identifying the patient's name, address, diagnosis, or treatment  
7 received by an ambulance service under the authority of this chapter is not a public record and  
8 is confidential, except for official purposes, and may not be published or disclosed without  
9 authorization from the patient or the patient's designee.

1    **BILL HISTORY**

2    1/25/99 First read in Senate and referred to Judiciary. S.J. 178

3    1/27/99 Scheduled for Committee hearing on this date.

4    1/27/99 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 209

5    1/29/99 Senate Do Pass Amended, Passed, AYES 28, NAYS 5. S.J. 263

6    2/1/99 First read in House and referred to committee assignment waived. H.J. 300

7    2/2/99 Referred to Judiciary. H.J. 332

8    2/12/99 Scheduled for Committee hearing on this date.

9    2/12/99 Judiciary Do Pass Amended, Passed, AYES 9, NAYS 2. H.J. 504

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

475C0480

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB131** - 2/9/99

Introduced by: Senators Whiting, Albers, Brosz, Drake, Flowers, Madden, and Staggers and  
Representatives Hennies, Duniphan, Fitzgerald, McCoy, Napoli, and Wilson

1 FOR AN ACT ENTITLED, An Act to revise the rate of reimbursement to the county for certain  
2 parole violator detention expenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 24-15-28 be amended to read as follows:

5 24-15-28. The state shall reimburse any county of this state for expenses the county incurs  
6 for the detention of a parolee pursuant to §§ 24-15-19 and 24-15-21. The reimbursement may  
7 not exceed ~~forty~~ fifty dollars per day. Upon receipt of the bill, the state shall make reimbursement  
8 within thirty days. No county may be reimbursed by the state for costs incurred from detaining  
9 a parolee held for criminal charges unrelated to the parolee's current conviction and sentence.

1    **BILL HISTORY**

2    1/25/99 First read in Senate and referred to Judiciary. S.J. 179

3    2/5/99 Scheduled for Committee hearing on this date.

4    2/5/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 364

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

715C0444

## SENATE ENGROSSED NO. **SB134** - 2/5/99

Introduced by: Senators Brown (Arnold), Dunn (Jim), Flowers, Lawler, Madden, Rounds, and  
Whiting and Representatives Fischer-Clemens, Brooks, Brown (Richard),  
McCoy, Monroe, and Peterson

1 FOR AN ACT ENTITLED, An Act to require certain health plans to cover certain dental care  
2 services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-17-1 be amended to read as follows:

5 58-17-1. No policy of health insurance ~~shall~~ may be delivered or issued for delivery to any  
6 person in this state unless it otherwise complies with this title, ~~and complies~~ with §§ 58-17-1.1  
7 to 58-17-11, inclusive, and with this Act.

8 Section 2. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as  
9 follows:

10 Any health benefit plan as defined by § 58-17-63 shall cover anesthesia and hospital charges  
11 for dental care provided to a covered person who:

12 (1) Is a child under age five; or

13 (2) Is severely disabled or otherwise suffers from a developmental disability as determined  
14 by a licensed physician which places such person at serious risk.

15 Such coverage applies regardless of whether the services are provided in a hospital or a  
16 dental office. A health carrier may require prior authorization of hospitalization for dental care

1 procedures in the same manner that prior authorization is required for hospitalization for other  
2 covered diseases or conditions.

3 Section 3. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any health benefit plan as defined by § 58-18-42 shall cover anesthesia and hospital charges  
6 for dental care provided to a covered person who:

- 7 (1) Is a child under age five; or  
8 (2) Is severely disabled or otherwise suffers from a developmental disability as determined  
9 by a licensed physician which places such person at serious risk.

10 Such coverage applies regardless of whether the services are provided in a hospital or a  
11 dental office. A health carrier may require prior authorization of hospitalization for dental care  
12 procedures in the same manner that prior authorization is required for hospitalization for other  
13 covered diseases or conditions.

1    **BILL HISTORY**

2    1/26/99 First read in Senate and referred to Health and Human Services. S.J. 193

3    2/3/99 Scheduled for Committee hearing on this date.

4    2/3/99 Health and Human Services Do Pass, Passed, AYES 5, NAYS 2. S.J. 316

5    2/4/99 Motion to Amend, Passed. S.J. 339

6    2/4/99 Senate Do Pass Amended, Passed, AYES 29, NAYS 4. S.J. 339

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

543C0740

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB176** - 2/9/99

Introduced by: Senator Whiting and Representative Jaspers

1 FOR AN ACT ENTITLED, An Act to restrict the possession of firearms on certain off-road  
2 vehicles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-20-6.6 be amended to read as follows:

5 32-20-6.6. No person, other than a law enforcement officer or conservation officer, or any  
6 person on the person's own land or land leased by the person which is not located within a  
7 firearms big game hunting unit during an open season, may operate or ride on any motorcycle  
8 or off-road vehicle with any firearm in the person's possession unless the firearm is completely  
9 unloaded and within a carrying case which encloses the entire firearm. However, this section  
10 does not apply to any person who is carrying a pistol and possesses a permit to carry a concealed  
11 pistol issued pursuant to chapter 23-7. This section shall be enforced by all law enforcement  
12 officers including conservation officers, notwithstanding the provisions of § 41-15-10.1. A  
13 violation of this section is a Class 2 misdemeanor.



1    **BILL HISTORY**

2    1/27/99 First read in Senate and referred to Judiciary. S.J. 216

3    2/3/99 Scheduled for Committee hearing on this date.

4    2/8/99 Scheduled for Committee hearing on this date.

5    2/8/99 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 367

6    2/8/99 Judiciary Place on Consent Calendar.